United States Court of Appeals

for the Second Circuit

APPENDIX

No. 76-4150

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

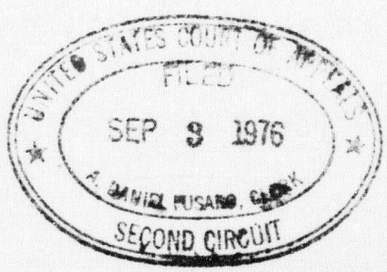
v.

ARKAY PACKAGING CORPORATION,

Respondent.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

APPENDIX



ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D.C. 20570

ABS DUPLICATORS, INC.—1732 Eye Street, N.W.—Washington, D.C.—298-5537

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Arkay Packaging Corporation

Case No.: 29-CA-3992

8.28.74	Charge filed
11.25.74	Complaint and Notice of Hearing, dated
12. 2.74	Respondent's Answer, received
12. 6.74	Order Rescheduling Hearing, dated
1.10.75	Order Rescheduling Hearing, dated
2. 5.75	Hearing opened
2.25.75	Hearing closed
6.30.75	Administrative Law Judge's Decision issued
7.29.75	Respondent's Exceptions to the Decision of the Administrative Judge Judge, received
7.29.75	Charging Party's Exceptions to the Decision of Administrative Law Judge, received
8. 4.75	General Counsel's Exceptions to the Administrative Law Judge's Decision, received
10.24.75	Decision and Order issued by the National Labor Relations Board

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JD-381-75
Hauppauge, N.Y.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

ARKAY PACKAGING CORPORATION

and

Case No. 29-CA-3992

LOCAL 119B, GRAPHIC ARTS
INTERNATIONAL UNION, AFL-CIO

Howard Edelman, Esq., for
the General Counsel.
Hugh Husband, Esq., of
Bridgehampton, N.Y., for
the Respondent.
Vincent Aronson and
Irwin Bluestein, Esqs.
(Lieberman, Aronson &
Rosenberg) of New York,
N.Y., for the Charging
Party.

DECISION

Statement of the Case

THOMAS E. BRACKEN, Administrative Law Judge: This case was tried at Brooklyn, New York, on February 5, 6, and 25, 1975. 1/ The charge was filed by Local 119B, Graphic Arts International Union, AFL-CIO, on August 28, and the complaint was issued on November 25. The primary issues are whether the Company, the Respondent, violated Section 8(a)(1) and (2) of the National Labor Relations Act, as amended by: (a) unlawfully assisting and supporting Local 381, Folding Box, Corrugated Box and Display Workers Union, AFL-CIO by urging and soliciting its employees to sign Local 381 authorization cards; (b) unlawfully threatening employees with discharge and unlawfully assisting Local 381 by a speech given by Howard Bates on August 22; (c) whether the economic strike which commenced on June 11 was converted into an unfair labor practice strike on or about July 23;

1/ All dates are in 1974 unless otherwise stated.

(d) recognizing and negotiating with the Employee Committee at a time when a question concerning representation was in issue.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and the Company, I make the following:

Findings of Fact

I. Jurisdiction

The Respondent, a New York corporation, is engaged in the manufacture of paper cartons and related products at it plant in Hauppauge, New York, where it annually ships goods valued in excess of $1,000,000, of which products valued in excess of $50,000 were shipped directly to customers located outside the State. The Company admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2),(6) and (7) of the Act.

II. The Labor Organizations Involved

Local 119B, Graphic Arts International Union, AFL-CIO, and Local 381, Folding Box, Corrugated Box and Display Workers Union, AFL-CIO, 2/ herein called Local 119B and Local 381, are labor organizations within the meaning of Section 2(5) of the Act.

On the first day of the hearing, the General Counsel amended the Complaint on the record to charge the Respondent with an additional violation of Sections 8(a)(1) and (2) of the Act by recognizing and negotiating with an Employee Committee, and took the position at the hearing that the Employee Committee was a labor organization within the meaning of the Act. Respondent, at the hearing and in the brief, denied that the Employee Committee was a labor organization. On the basis of the uncontroverted and credible evidence, I find that the Committee was initiated by the employees; was composed of employee representatives elected by the employees in the

2/ Further identified in the General Counsel's brief as being an affiliate of the International Brotherhood of Pulp, Sulphite and Paper Mill Workers.

various departments to represent the employees in dealing with the Company; that the Committee met twice with agents of the Respondent to discuss hours and working conditions; I find, therefore, that the Employee Committee is a labor organization within the meaning of the Act. 3/

III. The Alleged Unfair Labor Practices

A. Credibility

The only testimony elicited in this proceeding was from witnesses called by the General Counsel; the Respondent called no witnesses to rebut any of the testimony. Four of the witnesses, Romaner, Provenzano, Wolmart and Caruso were still working for the Respondent at the time of their testimony, and testified factually and directly, without any attempt to shade their testimony so as to aid the Respondent. The findings of fact herein are based on the uncontradicted testimony of the General Counsel's witnesses, who were credible and whose testimony was generally corroborative.

B. Background Facts

Local 119B has had collective-bargaining agreements with the Respondent since 1948. In 1954 the Respondent became a member of an employer association, Printers League Section of the Printing Industries of Metropolitan New York, and this association had agreements with Local 119B on behalf of the Respondent, for the next 20 years. The agreements covered a unit of employees in the finishing operations of the Company, known as finishing employees. 4/ The last Association agreement in which the Respondent was a participant commenced June 1, 1971, and terminated February 28, 1974. Prior to the termination date, Respondent gave timely notice to Local 119B that it was withdrawing from membership in the Association.

3/ Section 2(5) of the Act, defines a labor organization as

> " . . . any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

4/ Employees in departments other than the finishing department were represented by various other unions, but such employees and unions are not relevant to this case.

Thereafter, beginning sometime in February, Local 119B began to negotiate with the Respondent on an individual basis. Joseph Hellman, president, and Edward Ruggiero, business representative, represented Local 119B. Howard Kaneff, president, Howard Bates, vice president and general manager, and David Kramer, attorney, represented the Company. Negotiations took place until June 10, when they terminated without an agreement being reached. On June 11, the Union commenced an economic strike, with a picket line at the Respondent's plant. About 60 employees were represented by the Union at this time.

Throughout the negotiations, there was one "major stumbling block" that prevented the parties from reaching an agreement, and that was the issue of working hours. The previous contract had called for a 34 1/2 hour workweek, and the Company wanted a 37 1/2 hour workweek. This issue came up frequently during the negotiations. The Company representatives pointed out repeatedly that another union in the area in the same folding box industry, Local 381, had a 37 1/2 hour workweek in its contracts with employers. The Company also wanted general relief in wages, but this was secondary to the issue of the workweek.

Shortly after the strike commenced Hellman met with the president of the Company, Kaneff, to try to terminate the strike. Again Kaneff stated that he needed relief in the hours, and Hellman told him that "I couldn't give him 37 1/2 hour week because all our shops were working 34 1/2." The meeting thereupon terminated.

A few days after the picket line was established, Hellman began to receive reports from pickets that members of Local 381 were going in to work in the plant as replacements for striking employees. Hellman called Benny Cianciulla, president of Local 381, and complained about it. Cianciulla conceded that it was possible some members of Local 381 were going into the Respondent's shop soliciting jobs on their own.

In July, Hellman received reports from pickets that more and more members of Local 381 were going into the plant as strike replacements, and the strikers wanted to know what the Union was doing about it. Hellman stated "I told them then that it was now no longer an economic strike, it was an unfair labor practice strike because based on the information we were receiving, the Company was violating the law." Hellman made further calls to Cianciulla, who finally conceded that some Local 381 representatives were sending people into work at the plant but that he, personally, had nothing to do with it.

Towards the end of July, Hellman and Ruggerio met with company attorney, Kramer, Vice President Bates, and Howard Roche, a Company official, at the offices of a Federal Mediator. Company representatives stated that they were no longer hurting, things were going well, and that they had things pretty well under control. Hellman accused them of bringing in Local 381 to do Local 119B's work. The Mediator then separated the parties. After conferring with the representatives of the Respondent, the Mediator advised Hellman that there didn't appear to be any chance of settlement, because the Company was insisting on a 37 1/2 hour workweek.

On July 29, Local 119B filed a joint petition with Local 1034, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, seeking the same unit covered in the prior agreement with Respondent, under the Association agreement. No explanation was made at the hearing as to why Local 119B sought to represent the employees jointly with Teamsters Local 1034, but such issue is not relevant to this case.

In response to a letter from Region 29 concerning this petition, Kramer, Respondent's attorney, on August 6 replied, forwarding a copy of the expired contract with Local 119B, advising the Region of the names of unions which had contracts with the Company, and then stated "In addition we are advised that Local 381 . . . may claim to represent the employees in the proposed unit." Thereafter, in a letter dated August 13 the Region scheduled a conference for August 28 to try to work out a consent election. Local 381 was listed on the conference letter as a recipient, just as it was listed as a recipient of a Region letter dated August 9 to all interested parties. The conference was not held on August 28, as Local 119B filed the instant charge on that date.

1. Distribution of Local 381 Cards

John Romaner was hired by the Respondent in early June, prior to commencement of the strike. He is not a member of Local 119B. In July, while driving his van truck into the plant carrying three other employees, pickets massed around his vehicle and tried to pull him out. Sometime after this event an employee in his department, whose name he could not recall, gave him a Local 381 authorization card. 5/ In the middle of that day Romaner

5/ This authorization card (like all cards in General Counsel's Exhibits 10A to 10E inclusive), are unequivocal applications for membership in Local 381 and authorization for representation by that union.

went to the office of Raymond Erario, who was a personal friend, to discuss the card. Erario is the supervisor of the finishing department, and admittedly a supervisor under the Act. He also is the son of the secretary-treasurer of Local 381, and was formerly a member of Local 381. Romaner asked Erario if he knew anything about the cards, and Erario replied, "Yes, don't worry about it, it's no big secret." Romaner then asked if it was a good union and about benefits. Erario held an otherwise unidentified red booklet in his hand and discussed some of the benefits contained therein, such as Blue Cross and Blue Shield provisions. Erario did not try to persuade Romaner to sign or not to sign the card.

Shortly after his conference with Erario, Romaner talked to Muratore in the plant about Local 381, as he had heard Muratore was a member of that union. He asked Muratore if it was a good union and Muratore said it was, but expressed no opinion as to whether Romaner should sign the card or not. Romaner signed his Local 381 authorization card on July 23.

Lou Ann Provenzano was hired around the last week of June for the glue department. She had not previously worked in any type factory, and was totally inexperienced in such work. In mid-July, on a visit to the glue line to visit some girl friends, they showed her some union cards. Muratore came over and told the girls "that if any of the girls were interested in getting a union, getting, you know, have a union represent them, to fill them out and send them in." Provenzano signed her Local 381 authorization card on July 23.

Ray Wolmart began work at the Respondent's plant in late June in the gold stamping department. In July on the glue line, he had a conversation with Muratore about a union " . . . that was going into the shop, supposedly going into the s[illegible] and I asked him if he had cards for it." Muratore said he h[illegible] cards but about 3 weeks later on a break, Muratore gave [illegible] a union card. When Wolmart hesitated about taking the c[illegible]d, Muratore said "it was all right with Ray." I find as a fact that the Ray referred to was Ray Erario, Muratore's supervisor. Wolmart took the card home, signed it and later gave it back to Muratore. The authorization card of Wolmart to Local 381 was dated August 13.

Christopher Caruso was hired by the Respondent on July 3 as a diecutting operator. In August he heard from other people in the factory that Muratore had cards for Local 381.

Caruso asked Muratore for a card in the cafeteria and received three or four cards. Caruso signed a card on August 16 and mailed it to Local 381, and gave the other two or three cards out "to the guys in my Department."

Roy Pitkanen started to work for the Respondent in "early to middle August," as a sealer in the gluing department. On August 22, about 5 minutes after returning from hearing a speech -- which will hereinbelow be fully reviewed -- by Howard Bates, vice president, Muratore walked up to Pitkanen. Pitkanen described what happened as follows, "He just handed me a card and a pen and said 'read it over quickly and sign it.' He said that is the new union they want to bring in here." Pitkanen filled out and signed the Local 381 card and gave it to Muratore. Pitkanen then saw Muratore give a card and a pen to an employee named Chris, but did not see Chris sign it, as he returned to his work. Pitkanen also saw Muratore go up to a female employee with a card, and she informed him that she had already filled one out. Pitkanen voluntarily quit 10 days after his hire.

C. The Issue of Muratore's Supervisory Status

General Counsel in his complaint and brief alleged that Muratore is a supervisor within the meaning of the Act. Respondent denied such supervisory status in his answer and brief.

Unfortunately, we have the direct testimony of only one witness to shed light on this issue, Lou Ann Provenzano. Provenzano, while in her late teens or early twenties, just as most of the strike replacements were who testified for General Counsel, was a forthright and candid witness.

Provenzano testified that she had been hired by Erario in the last week of June. Erario was Muratore's immediate supervisor and Muratore went to him about problems. In June, July and August there were 11 employees in the glue department who operated four machines that glued different size cartons. The actual operation of the glue machines was very simple, as the girls in the department, inexperienced as they were, would break in new employees and show them how to run these machines. Muratore did not play any part in training new employees.

Muratore would setup the machines for gluing of the different size cartons. Provenzano testified that in the summer of 1974 he spent 90 percent of his time doing manual

work, such as setting up, adjusting and fixing the machines. Muratore also performed paperwork at a desk in the plant, that he shared with Harold Sheets, a mechanic. Sheets did just about the same work as Muratore, except that Muratore was a little more experienced. The paperwork performed by Muratore consisted of keeping records and filling out production sheets. Muratore receives a list of what jobs he has to run, and checks to see if he has the glue and corrugated board to carryout the assignment.

Muratore assigned the jobs that were to be performed by the employees in the glue department, and on occasion pulled an operator off one job and put her on another. If an employee wanted to come in late she would "first speak to Muratore because he would have to get a girl to replace me." Muratore would give the operator other duties, such as cleaning up the area, rather than go for a break when a machine would breakdown. Muratore was responsible to see that the work was turned out properly.

Muratore punched a timeclock and worked the same time schedule, just as the other glue department employees did. As far as Provenzano knew, Muratore had never discharged, laid off, or suspended any employees; he had never promoted, given a raise or bonus to any employee; he had nothing to do with scheduling overtime; he had nothing to do with hiring employees, as Erario performed that function. Provenzano was asked by General Counsel to give examples of incidents in which Muratore reprimanded employees. She replied "It could be anything. If a girl just left the department to go to the bathroom, and they took a long time to get back, he would tell them you have to make it more quicker, or, you know, just little things like that." When pressed by General Counsel for more examples she could not remember any.

During the hearing no specific job title was ever ascribed to Muratore. However, in the affidavit of Romaner dated October 4, (General Counsel Exhibit 9) Romaner referred to Muratore as "a line manager in the glue department." This job title used by Romaner has particular significance in the light of testimony given by Hellman on the first day of the hearing. Hellman was being cross-examined by Respondent's counsel, about the former collective-bargaining agreements between the Respondent and Local 119B and the following colloquy took place:

Q. (Husband) You don't remember anything about line managers ?
A. (Hellman) No.

Q. Line managers with the company were covered by your contract, weren't they?
A. Yes.

Q. And they were union members were they not?
A. Yes.

The question to be resolved is whether, as the General Counsel contends, Muratore occupied in the summer of 1974 the status of supervisor within the statutory definition, or whether, as the Respondent insists, was instead merely a highly skilled employee who because of his superior experience and knowledge, was looked up to by the inexperienced glue department employees. I am persuaded, after consideration of all the relevant facts, that the question must be resolved in favor of the Respondent, for the reasons that follow.

Section 2(11) of the Act defines the authority which renders a person a supervisor. These include, among others, the authority to transfer, assign, discipline, or responsibly to direct if "the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

As appears from the findings above, Muratore functioned primarily as a setup man, spending 90 percent of his time doing manual work, setting up and adjusting the four glue machines. He did not train the employees in the operation of the machines as their operation was so elementary that inexperienced employees would show the brand new employees how to operate the glue machines. The remaining 10 percent of Muratore's time was spent in seeing that enough glue and corrugated board was on hand to carryout the assignment, in keeping production records for the glue department and in performing some leadman type duties.

Muratore did assign the glue department employees to their jobs. However, this assignment was necessarily of a routine nature, as the gluing of cartons was so simple that inexperienced employees could operate the glue machines without any formal training.

General Counsel inquired of Provenzano as to Muratore's power to reprimand employees. When pressed for specific incidents

in which Muratore reprimanded employees, she could only think of one. It is plain that he had no real authority to discipline employees, as the only reprimand that the General Counsel's witness could cite, was for the very minor matter of employees taking too long to go to the bathroom.

Muratore shared a shop desk with Sheets, a mechanic and machine adjustor, and they both did about the same type of work, only Muratore was a little more experienced. There was no claim by General Counsel that Sheets was a supervisor.

The facts are clear that Muratore had no authority to hire, fire, transfer, suspend, layoff, discharge, reward or discipline other employees, or effectively to recommend such action. The question that remains then is whether the facts in this case are such, nevertheless, as to meet the "responsibly to direct" criterion for supervisory status as set forth in Section 2(11). I find that they are not. Considering all of the facts, including the extremely routine and simple work involved, that he spent 90 percent of his time on setup work, that mechanic Sheets did about the same work he did, and the availability of Erario in the area, I am persuaded that the preponderance of the facts reveals that Muratore has not been clothed with supervisory authority and that he was no more than a leadman, and that he was not a supervisor within the meaning of the Act. Graphics Typography, Inc., 217 NLRB No. 176; Wirtz Mfg. Co., Inc., 215 NLRB No. 50; Marinette Marine Corp., 179 NLRB 627.

General Counsel contends in his brief that, "assuming Muratore was not a supervisor, nevertheless, he was an agent of Respondent on its behalf." The facts cited above do not meet the burden of proving such agency. The link cited by General Counsel was a very sparse remark made by Erario to Romaner. Romaner who was friendly with Erario, went to Erario's office and asked him if he knew about this (Local 381) card, and Erario said ". . . don't worry about it, its no big secret." I cannot infer from this remark that Respondent knew that Muratore was distributing Local 381 cards. 6/ Erario's words clearly meant he knew cards were being distributed, but this cannot be stretched

6/ Muratore's distribution of cards in July and August was actually minimal. Romaner received his card from an employee whose name he could not recall; Provenzano received her card from the girls; Wolmart and Carcuso asked him for a card; and Muratore gave a card to only one employee Pitkanen, without being asked.

to mean that he knew Muratore was distributing them. There is likewise no proof that Respondent either authorized or ratified Maruatore's card distribution. Again the General Counsel rests on a weak link to try to bind the Company. When Muratore handed a card to Wolmart, Wolmart hestitated and Muratore said ". . . it was all right with Ray," referring to Ray Erario. Such a one line gratuitous statement by an employee cannot meet this burden of proof that the Respondent authorized or ratified Muratore's card distribution.

Accordingly, I conclude that Respondent did not violate Section 8(a)(1) and (2) of the Act by any conduct of Muratore as he was neither a supervisor or agent of the Respondent within the meaning of the Act.

D. Findings and Conclusions Relating to Bates' Speech

On August 22, vice president Bates read a prepared statement to a group of employees who had been called to the plant cafeteria during working hours for that purpose. Erario and other supervisors were also present. The parties stipulated that the statement read by Bates was as follows:

> Normally, fellows, I like to talk without any written documents in front of me so that I can talk a little closer to you, man to man. However, this statement is so important and can so easily be misconstrued in legal terminologies in the future that you can well understand why I am about to read this statement.
>
> An employer cannot make a promise of benefit nor grant a promise of benefit prior to an election. An employer cannot make any threat of any detrimental action prior to an election. On the other hand, unions can make any promises they want and practically any threats they want short of physical violence
>
> There will be an election held by the National Labor Relatons Board. At the election you will be given ballots. You will vote in secret. No one will see how you voted. On the ballot you will be given two choices: YES or NO. A vote

> YES is for Joe Hellman and the Teamsters. A vote NO is for Arkay. The real problem is voting YES for Joe Hellman is that it is not a vote for Hellman or the Bookbinders. It is really a vote for the Teamsters. If you vote YES you may be voting yourself out of a job. Hellman's purpose in winning the election is to force Arkay to sit down and negotiate to put back each and every striker to work. If they do that, then you will be out of a job. Hellman does not have your interests at heart. He is solely committed to getting you out of Arkay and putting a member of his union in your job. Eventually anyone who is in the plant, should Hellman win, will not be paying dues to the Bookbinders or getting benefits from the Bookbinders. They will find themselves paying dues to the Teamsters and getting whatever benefits the Teamsters have to offer. They will lose every benefit that they have ever gotten or hope to get under the Bookbinder Welfare and Pension Plans.

There is no doubt that Bates did more than merely read the prepared, one page, 344 word statement during the meeting which commenced at 3:15 p.m. Thomas Cybulski, employed by Respondent on August 16, testified that the speech lasted about 27 minutes; Pitkanen testified about 20 minutes; Wolmart testified roughly 15 minutes and Romaner about 10 minutes. Caruso testified that "he (Bates) read it as you would read a speech, you know, glancing up and down." Cybulski testified that Bates glanced at a piece of paper that he was holding "every now and then."

However, after reading the speech, Bates volunteered additional remarks, and answered questions from the audience. Romaner testified that after the speech was given, "an employee asked Mr. Bates, . . . if there will ever be a union of our own in there, and he answered, he says if any union, most likely 381." He further recalled Bates stating that it would be cheaper to join Local 381 than the Union outside, but he did not recall Bates saying that Local 381 had better benefits than the Union outside. He also testified that Bates referred to the Local 119B pickets as a vicious mob.

Cybulski testified that "after awhile" Bates mentioned 381 or 318, and that a vote for 318 or 381 was a vote for your job.

He also testified that Bates pointed to the striking Local 119B employees outside of the plant and referred to them as "Hellman and his mob, vicious mob, rather." Bates also told the employees that the other union (381) "would be cheaper to join and the benefits would be better" than Local 119B.

Pitkanen did not recall whether Bates said "they" (Respondent) were "trying or thinking about getting another union in." However, he did recall Bates stating, "If you vote Yes you may be voting yourself out of a job." He also remembered Bates stating that "the union they wanted to bring in would be cheaper to join and have better benefits for everybody."

General Counsel contends that the following portion of Bates' prepared statement is a threat of discharge: "If you vote YES you may be voting yourself out of a job." As proof of General Counsel's conclusion, he states in his brief that "Bates intended to convey to the employees that it they voted for Local 119B and Local 119B won the election, Respondent would fire them."

I am unable to find any such threat of discharge in Bates' words cited above. At the time the statement was read there was an election to be held in which the employees would have a choice between a YES vote for joint petitioners Local 119B and Teamsters Local 1034, or for no union. Local 381 was not on the ballot. The meaning of the cited sentence was plain enough to the listeners when Bates followed it with the next several sentences:

> Hellman's purpose in winning the election is to force Arkay to sit down and negotiate to put back each and every striker to work. <u>If they do that, then you will be out of a job.</u> (Emphasis supplied).
>
> * * * * *
>
> <u>He</u> [Hellman] <u>is solely committed to getting you out of Arkay</u> and putting a member of his union in your job.

I am unable to find that these unsophisticated box factory employees could have interpreted the sentence singled out by the General Counsel to meet his subtle theory. Bates made an economic prediction in plain English words that they could understand. Certainly the strike replacements (in union terminology "strikebreakers") understood that if Local 119B won

the election Hellman would try to replace them with his own members who had loyally gone out on strike on June 11, and manned the picket lines down to the date of the speech. These strike replacements knew that Local 119B pickets had greatly resented the replacements going through their picket line, and had engaged in acts of violence to keep them from going into the plant to work. These employees knew of Bates' deep hostility towards "Hellman and his vicious mob." Under the above circumstances it would never occur to these strike replacements that Respondent would voluntarily fire them, under any conditions, so as to permit Local 119B members to come back and work in their place in the Respondent's plant.

Accordingly, I find that the speech of Bates did not contain a threat of discharge and did not violate Section 8(a)(1) of the Act.

I turn now to the remarks made by Bates that were in addition to the printed statement. There is no doubt from the testimony that he referred to the Local 119B pickets as a "vicious mob," as this was testified to by Cybulski, Romaner and Pitkanen. The uncontradicted testimony does show that there was violence on the picket line, that strike replacements had been pulled out of cars and that there had been vandalism to some of the replacements' cars. Under these circumstances I find that Bates' use of that term was not a violation of the Act.

Pitkanen and Cybulski both testified without contradiction that Bates told the employees that the Union the Respondent wanted to bring in, obviously Local 381, would be cheaper to join (than Local 119B) and have better benefits for the employees. Romaner testified that Bates said it would be cheaper to join Local 381, but did not recall any mention of better benefits.

Bates statement that it would be cheaper to join Local 381 could be factually a true statement, since the record does not show what the initiation fee or dues were, of either Local 119B or Local 381. Also, it was not in the Respondent's power to affect the amount of Local 381's initiation fee or dues, as this is an internal matter solely regulated by the Union. I find that Bates' remark about Local 381 being cheaper to join was protected by Section 8(c) of the Act, and not a violation thereof.

However, Bates' remarks, as credibly testified to by Pitkanen and corroborated by Cybulski that Local 381 benefits would be better for Respondent's employees held out to these assembled hard-working production workers the glimmering promise of an easy and automatic improvement in their daily worklives. This meant that if Local 381 became their bargaining representative, the employees would receive in some degree, perhaps not in all, better wages, better hours, better working conditions, better health and welfare benefits, better pension benefits. But these improved benefits could only be realized, if, after the employees turned out Local 119B, and secured Local 381 as their bargaining representative, the Respondent agreed to grant these better wages, better health and pension benefits. Therefore, Bates by his statement was holding out to these employees the promise that you get rid of Local 119B, and get Local 381 in our plant, and you can be assured that the Company will give you better benefits in the various components that make up your economic life in this plant.

It is the conclusion of the Administrative Law Judge that the evidence presented herein fully supports the allegations of General Counsel and the Charging Party that the Respondent made clear to its employees its desire that they get rid of Local 119B and support Local 381, and that this conduct constituted restraint and coercion of the employees within the meaning of Section 8(a)(1) of the Act, and that it further constituted illegal interference, within the meaning of Section 8(a)(2).

E. Findings and Conclusions Relating to the Employee Committee

On the first day of the hearing, General Counsel was examining his witness Wolmart, when to General Counsel's obvious surprise, Wolmart testified about an Employee Committee that had been established in late January, 1975 to deal with Respondent. As Wolmart put it, in working man's language, "The working people got together and wanted some representation for themselves to management." Wolmart was elected as a delegate from his department.

Caruso testified that in his department they wanted to get "representation" so they got together and picked Danny Falcone. Romaner testified that the Committee was formed by the employees,

"by the working people," and since there were only three people in his department, Danny Falcone became their representative on the Committee. Provenzano testified that there was an election in the glue department and Michael LoCascio was elected their representative on the Employee Committee.

Several days after the employees' representatives were elected, the Committee met with Kaneff, Respondent president, William Roche, Respondent vice president, and John Rizzo, Respondent plant superintendent, in the Company conference room during working hours. The meeting lasted about 1-1/2 hours. Topics discussed included "hours of work, overtime, lateness and absentees." On February 4, 1975, the Employee Committee met with Roche and Rizzo for a second meeting, this being the day before the opening of this hearing.

It is true that the Employee Committee was without formal structure as argued by the Respondent in his brief, but it is well established that to meet the Act's requirements so as to constitute a labor organization, no formal structure is required. Board and Court cases are legion holding that similar Employee and Shop Committees are labor organizations under the Act, even though they collect no dues, have no treasury, nc constitution or bylaws, no membership requirements or other indicia of the conventional labor organization. N.L.R.B. v. Clapper's Mfg. Inc., 458 F. 2d 414 (3 Cir. 1972), American Manufacturing Company, Inc., 196 NLRB 248 (1972).

The question remains did the Respondent recognize and bargain with the Employee Committee, and I find that it did. The top officials of the Respondent corporation met twice with the elected representatives of the Employee Committee on company time in company premises. It was totally in the power of the Respondent to refuse to meet with the Committee, and to refuse to permit these employees to attend the meeting, but it did not do so. We have the uncontradicted and credible testimony of Wolmart that the topics discussed in that conference room included "hours of work, overtime, lateness and absentees." These four subjects are clearly basic and fundamental to any negotiations between employers and labor organizations and in fact are mandatory subjects of bargaining between an employer and the proper collective-bargaining representative. The inference can be drawn, and I draw it, that the Respondent recognized the Employee Committee when it permitted the employees to meet in the Company's conference room, and bargain with it over hours of work, overtime, lateness and absentees on two different occasions.

The Respondent well knew that a question of representation had existed since the previous summer and still very much existed. Yet, in the face of this knowledge the Respondent choose to recognize and bargain with the Employee Committee.

Long ago the Board firmly established under its Midwest Piping doctrine 7/ that an employer violates Section 8(a)(1) and (2) of the Act if he recognizes and or bargains with one union at a time when another union claims recognition and a question concerning representation is in issue. Recently in Kay Jay Corporation d/b/a McKees Rocks Foodland, 216 NLRB No. 166, 1975 the Board reviewed and reaffirmed the Midwest Piping doctrine:

> When rival unions attempt to obtain recognition from an employer, a question concerning representation is thereby raised. Since the employees have a right under the Act to a free and untrammeled choice, the Employer is barred from making the choice for his employees by recognizing one of the competing unions.

I find that Respondent violated Section 8(a)(1) and 8(a)(2) of the Act by its assistance to and recognition of the Employee Committee during the time when another labor organization was claiming representative status, thereby giving unlawful support to the Employee Committee.

F. Findings and Conclusions Relating to the Nature of the Strike

The General Counsel contends that the economic strike which commenced on June 11 was converted into an unfair labor practice strike on or about July 23. I do not agree that the strike was converted to an unfair labor practice strike on July 23, or any other date. General Counsel uses July 23 as the turning point date, on the basis that Muratore started passing out Local 381 authorization cards and encouraging employees to sign and join Local 381, on or about that date. Since I have already found that Muratore was not a supervisor or agent, and that his distribution of Local 381 cards did not cause the Respondent to violate the Act, it is clear that the strike could not have been converted to an unfair labor practice strike on or about July 23.

Although I have found that Respondent's conduct, by its supervisor Howard Bates, at the meeting of August 22, violates the Act, I cannot find that it converted the strike that admittedly

7/ Midwest Piping and Supply Co., Inc., 63 NLRB 1060 (1945).

started as an economic one, into an unfair labor practice strike. The Board has stated many times that an employer's unfair labor practices:

> . . . during an economic strike do not automatically convert it into an unfair labor practice strike. Such conversion will be found only where there is proof of a causal relationship between the unfair labor practices and the prolongation of the strike. Anchor Rome Mill, Inc., 86 NLRB 1120, 1122. See also Romo Paper Products Corp., 208 NLRB No. 96.

Proof of such a causal relationship was not offered, nor is it contained in any part of the record. To the contrary, the issue which caused the strike, described by General Counsel in his brief, "as the major stumbling block preventing agreement," the Respondent's demand for a 37-1/2 hour workweek, and Local 119B refusal to give up the 34-1/2 hour workweek -- remains the issue which still keeps the parties apart.

Conclusion of Law

1. The Respondent is engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Unions here involved, (a) Charging Party Local 119B Graphic Arts International Union, AFL-CIO, (b) Local 381, Folding Box, Corrugated Box and Display Workers Union, International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO, and (c) the Employee Committee are labor organizations within the meaning of Section 2(5) of the Act.

3. By promising economic and employment benefits to its employees if they joined Local 381, Respondent, by its Vice President Howard Bates has given unlawful assistance and support to Local 381, and has interfered with, restrained and coerced and is restraining and coerceing its employees, and has engaged in and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (2) of the Act.

4. By recognizing the Employee Committee on or about January 25, 1975 as the exclusive bargaining representative of its employees, at a time when a question concerning the representation

of its employees existed, Respondent has rendered and is rendering unlawful assistance and support to the Employee Committee, and has interfered with, restrained and coerced and is interfering with restraining, and coerceing its employees in the exercise of Section 7 rights in violation of Section 8(a)(1) and (2) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, within the meaning of Section 8(a)(1) and (2) of the Act, it will be recommended that the Respondent be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent, in violation of Section 8(a)(1) and (2) unlawfully assisted and contributed support to Local 381, it will be recommended that it cease and desist therefrom and from like and related conduct.

Having found that the Respondent in violation of Section 8(a)(1) and (2) unlawfully assisted and contributed support to the Employee Committee, the effects of this interference, as well as the Employer's continued recognition of that labor organization as the bargaining agent of the employees, constitute a continuing obstacle to the full exercise by the employees of their rights to self-organization and to bargain collectively through representatives of their own choosing, I shall recommend that the Respondent be ordered to withdraw recognition from the Employee Committee as the representative of any of its employees, unless and until the Employee Committee has been duly certified by the National Labor Relations Board as the exclusive representative of such employees.

Upon the above findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended: 8/

8/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein, shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

ORDER

Respondent, Arkay Packaging Corporation, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Giving assistance and support to Local 381, Folding Box, Corrugated Box and Display Workers Union, International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO, by promising economic and employment benefits to such employees if they join such organization, or by any other conduct proscribed by the Act.

(b) Giving assistance and support to the Employee Committee, and recognizing the Employee Committee, or any successor thereto, as the exclusive representatives of their employees for the purposes of collective bargaining, unless and until said labor organization shall have demonstrated its exclusive majority representative status among said employees in a Board conducted election.

(c) In any other like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right is affected by the proviso to Section 8(a)(3) of the Act.

(2) Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from the Employee Committee, or any successor labor organization, as the collective-bargaining representative of any of its employees, for the purpose of dealing with the Respondent concerning hours of employment, wages, grievances, or other terms and conditions of employment, unless and until the Board shall certify the Employee Committee as such representative.

(b) Post at its plant in Hauppauge, New York, copies of the attached notice marked "Appendix." 9/ Copies of the notice on forms provided by the Regional Director for Region 29, after being duly signed by an authorized representative of the Respondent, shall be posted by the Respondent immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated at Washington, D.C.

June 30, 1975

Thomas E. Bracken

Thomas E. Bracken
Administrative Law Judge

9/ In the event the Board's Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX ID-381-75

FORM NLRB-4727 (9-69)

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT assist or contribute support to LOCAL 381, FOLDING BOX, CORRUGATED BOX AND DISPLAY WORKERS UNION, INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, AFL-CIO.

WE WILL NOT assist or contribute support to the EMPLOYEE COMMITTE, which was formed by employees of ARKAY PACKAGING CORPORATION on or about January 25, 1975, nor will we assist or contribute support to any other labor organization.

WE WILL NOT recognize the EMPLOYEE COMMITTEE as the exclusive representative of our employees for the purpose of collective bargaining, unless and until it has been selected by our employees in an election conducted by the National Labor Relations Board.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid, or to refrain from any and all such activities, except to the extent that these right may be affected by agreements in conformity with Section 8(a)(3) of the National Labor Relations Act.

All our employees are free to become or remain, or refrain from becoming or remaining, members of either of the above-named labor organization, or of LOCAL 119B, GRAPHIC ARTS INTERNATIONAL UNION, AFL-CIO, or of any other union.

ARKAY PACKAGING CORPORATION
(Employer)

Dated _____ By _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street - 4th Floor, Brooklyn, New York, 11241 (Tel. No. 212 - 596-3535).

JOHN H. FANNING

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

ARKAY PACKAGING CORP.

Respondent,

29-CA-3992

and

LOCAL 119B, GRAPHIC ARTS INTERNATIONAL UNION, AFL-CIO

Charging Party.

RESPONDENT'S EXCEPTIONS
TO THE DECISION OF THE
ADMINISTRATIVE LAW JUDGE

Pursuant to Section 102.46 of the NLRB Rules and Regulations, as amended, the undersigned counsel for the Respondent herein respectfully submits the following as the Respondent's Exceptions to the decision[1] of Administrative Law Judge Thomas E. Bracken[2], dated June 30, 1975 in the above entitled matter.

1. The Judge erred in finding that the Respondent "did recognize and bargain" with the "Employee Committee" (JD. pp. 16,17).

---

1 Reference to the Administrative Law Judge's decision herein will be as follows: (JD page).

2 The Administrative Law Judge will be referred to herein as "Judge Bracken" or "the Judge".

2. The Judge erred in finding that Respondent did "bargain with" the "Employee Committee" on the two occasions that company representatives met with some of the committee members (JD p. 1

3. The Judge erred in finding that Respondent violated Sections 8(a)(1) and (2) of the LMRA by its "assistance to and recognition of the Employee Committee" (JD p. 17).

4. The Judge erred in finding that as a conclusion of law, "By recognizing the Employee Committee on or about January 25, 1975 as the exclusive bargaining representative of its employees...Respondent has rendered and is rendering unlawful assistance and support to the Employee Committee" thus violating "Section 8(a)(1) and (2) of the Act." (JD pp. 18, 19).

5. The Judge erred in finding that the "aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act (JD p. 19).

6. The Judge erred in finding that as a remedy for the alleged unfair labor practice, "Respondent be ordered to withdraw recognition from the Employee Committee as the representative of any of its employees (JD p. 19).

7. The Judge erred in finding that, as his Order, Respondent should "cease and desist from....giving assistance and support to the Employee Committee, and recognizing the Employee Committee or any successor thereto, as the exclusive representative of their employees for the purposes of collective bargaining" (JD p. 20).

8. The Judge erred in finding that the Respondent "withdraw and withhold all recognition from the Employee Committee, or any successor labor organization, as the collective bargaining representative of its employees... unless and until the Board shall certify the Employee Committee as such representative (JD p. 20).

9. The Judge erred in finding that as part of the Judge's Order, the Respondent should post at its plant in Hauppauge, New York the notice marked "Appendix" attached to the Judge's Decision and notify the Regional Director in writing of the steps taken to comply with the Order (JD p. 21).

10. The Judge erred in failing to find that the General Counsel failed to sustain the burden of proof on the allegation that the Respondent gave "assistance to and

recognition of the Employee Committee" (JD p. 17) "thus violating Sections 8(a)(1) and (2) of the Act (JD pp. 18-19).

11. The Judge erred in failing to find that the Counsel for the General Counsel failed to present a full depiction of the true nature of the "Employee Committee" in the three days of hearing (the last of which was over two weeks after the first two days of the hearing) (JD p. 16-17).

12. The Judge erred in finding that General Counsel first learned of the "Employee Committee" on the first day of the hearing when "to General Counsel's obvious surprise" a witness testified about "an Employee Committee" (JD p. 15).

Respectfully submitted,

Hugh P. Husband, Jr.
Counsel for Respondent
Main Street
Bridgehampton, New York 11932

dated: Bridgehampton, New York
July 28, 1975

CERTIFICATE OF SERVICE

I hereby certify that I have on this 28th day of July, 1975, served a copy of the foregoing Exceptions on the parties of record in this proceeding by mailing a copy thereof, postage prepaid, to Howard Edelman Esq., Counsel for the General Counsel, NLRB, 29th Region, 16 Court Street, Brooklyn, New York 11241; Lieberman, Aronson & Rosenberg, 1501 Broadway, New York, New York 10036.

Hugh P. Husband Jr. per CF
HUGH P. HUSBAND, JR.

July 28, 1975

Bridgehampton, New York 11932

221 NLRB No. 10

FJP

D--546
Hauppauge, N.Y.

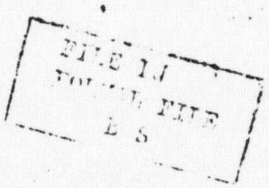
UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

ARKAY PACKAGING CORPORATION

and

LOCAL 119B, GRAPHIC ARTS
INTERNATIONAL UNION, AFL--CIO



Case 29--CA--3992

DECISION AND ORDER

On June 30, 1975, Administrative Law Judge Thomas E. Bracken issued the attached Decision in this proceeding. Thereafter, the Respondent, the General Counsel, and the Charging Party filed exceptions and the General Counsel filed a supporting brief; the Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order

of the Administrative Law Judge as modified below and hereby orders that Respondent, Arkay Packaging Corporation, Hauppauge, New York, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order, as so modified.

1. Delete the word "other" from paragraph 1(c).

2. Substitute the attached notice for that of the Administrative Law Judge.

Dated, Washington, D.C. OCT 24 1975

John H. Fanning, Member

Howard Jenkins, Jr., Member

John A. Penello, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

D—546

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT assist or contribute support to Local 381, Folding Box, Corrugated Box and Display Workers Union, International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL--CIO.

WE WILL NOT assist or contribute support to the Employee Committee, which was formed by employees of Arkay Packaging Corporation on or about January 25, 1975, nor will we assist or contribute support to any other labor organization.

WE WILL NOT recognize the Employee Committee as the exclusive representative of our employees for the purpose of collective bargaining, unless and until it has been selected by our employees in an election conducted by the National Labor Relations Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid, or to refrain from any and all such activities, except to the extent that these rights may be affected by agreements in conformity with Section 8(a)(3) of the National Labor Relations Act.

All our employees are free to become or remain, or refrain from becoming or remaining, members of either of the above-named labor organizations, or of Local 119B, Graphic Arts International Union, AFL--CIO, or of any other union.

ARKAY PACKAGING CORPORATION
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11241, Telephone 212—596—5386.

ORIGINAL

GENERAL COUNSEL'S EXHIBIT 1(c)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

ARKAY PACKAGING CORPORATION

and

CASE NO. 29-CA-3992

LOCAL 119B, GRAPHIC ARTS
INTERNATIONAL UNION, AFL-CIO

COMPLAINT AND NOTICE OF HEARING

It having been charged by Local 119B, Graphic Arts International Union, AFL-CIO, herein called Local 119B, that Arkay Packaging Corporation herein called Respondent Company, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, et seq. herein called the Act, the General Counsel of the National Labor Relations Board herein called the Board, on behalf of the Board, by the undersigned Regional Director for Region 29, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations - Series 8, as amended, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. The Charge in Case No. 29-CA-3992 was filed by Local 119B, on August 28, 1974, and served by registered mail upon Respondent Company on or about August 28, 1974.

2. Respondent Company is and has been at all times material herein a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

3. At all times material herein Respondent Company has maintained its principal office and place of business at 22 Arkay Drive, in the Town of Hauppauge, County of Suffolk, and State of New York, where it is, and has been at all times material herein, engaged in the manufacture, sale and distribution of paper cartons, wrapping materials, labels, and related products.

4. During the past year, which period is representative of its annual operations generally, Respondent Company, in the course and conduct of its business operations, manufactured, sold and distributed at its

plant, products valued in excess of $1,000,000, of which products valued in excess of $50,000 were shipped from said plant in interstate commerce directly to states of the United States other than the state in which it is located.

5. Respondent Company is and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

6.(a) Local 119B is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

(b) Local 381, Folding Box, Corrigated Box and Display Workers Union, AFL-CIO, herein called Local 381, is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

7. Howard Bates, Raymond Erario, John Muratore, are, and have been at all times material herein, the Vice-President and General Manager, the Finishing Supervisor, and Glue Department supervisor, respectively of Respondent Company, acting on its behalf, and supervisors and/or agents thereof.

8. On or about August 22, 1974, Respondent Company, by Howard Bates, its Vice-President, its agents and supervisor, threatened its employees with discharge and other reprisals if they became or remained members of L o c a l 119B, and if they gave any assistance and support to it.

9. On or about August 22, 1974, and on various dates presently unknown during the months of July and August, 1974, Respondent Company, by Howard Bates, Raymond Erario and John Muratore, its Vice-President, Finishing Supervisor and Glue department supervisor, its agents and/or supervisors urged and solicited its employees to sign cards designating Local 381, as their representative for collective bargaining purposes.

10. On or about June 11, 1974, the employees of Respondent ceased work concertedly, and went out on strike, and since said date, and up to the present time continued to engage in such concerted work stoppage and strike.

11. The strike described above in paragraph 10 was prolonged by the unfair labor practices of Respondent described above in paragraphs 8 and 9.

12. By the acts described above in paragraphs 8 and 9, and by each of said acts, Respondent Company interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

13. By the acts described above in paragraphs 9, and by each of said acts, Respondent Company rendered and is rendering unlawful assistance and support to a labor organization, and contributed and is contributing financial and other support to a labor organization, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(2) and Section 2(6) and (7) of the Act.

14. The acts of Respondent Company described above in paragraphs 8 and 9, occurring in connection with the operations of Respondent Company described above in paragraphs 2 through 5, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE FURTHER NOTICE that on the 12th day of December, 1974, at 10:00 A.M., at 16 Court Street, Fourth Floor, in the Borough of Brooklyn, in the City and State of New York and consecutive days thereafter until concluded, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedures In Formal Hearings Held Before The National Labor Relations Board In Unfair Labor Practices Cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Complaint within ten (10) days from the service thereof, and that unless it does so all the allegations in the Complaint shall be deemed to be admitted by it to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Dated at Brooklyn, New York this 25th ~~day~~ of November, 1974.

Samuel M. Kaynard
Regional Director
National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York 11241

GENERAL COUNSEL'S EXHIBIT 1(c)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

ARKAY PACKAGING CORPORATION -and- LOCAL 119B, GRAPHIC ARTS INTERNATIONAL UNION, AFL-CIO	)	CASE NO. 29-CA-3992

ANSWER

ARKAY PACKAGING CORPORATION, herein referred to as "Arkay", answering the Complaint issued by the Regional Director on November 25, 1974 in the above-entitled matter, by its attorneys, FRIEDLANDER, GAINES, COHEN, ROSENTHAL & ROSENBERG:

1. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 6(b) of the Complaint;

2. Denies each and every allegation contained in Paragraphs 8, 9, 11, 12, 13 and 14; and

3. Denies so much of Paragraph 7 of the Complaint as alleges that Howard Bates and John Muratori are, and have been at all times material herein, the vice president and general manager and Glue Department supervisor of Arkay, acting on its behalf, and supervisors and/or agents thereof, except admits that Howard Bates was a vice president of Arkay from July 1 through

October 25, 1974.

WHEREFORE, Arkay requests that the Complaint herein be dismissed.

Yours, etc.

FRIEDLANDER, GAINES, COHEN,
ROSENTHAL & ROSENBERG

By: David Kramer
David Kramer

Attorneys for Arkay Packaging
Corporation
Office & Post Office Address
1140 Avenue of the Americas
New York, New York 10036

(212) 575-9100

Dated: New York, New York
November 27, 1974

© 1973 JULIUS BLUMBERG, INC.

STATE OF NEW YORK, COUNTY OF ss.:

The undersigned, an attorney admitted to practice in the courts of New York State,

Check Applicable Box

☐ Certification By Attorney — certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

☐ Attorney's Affirmation — shows: deponent is the attorney(s) of record for in the within action; deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. This verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

.....
The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF ss.:

Check Applicable Box

☐ Individual Verification — being duly sworn, deposes and says: deponent is the in the within action; deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

☐ Corporate Verification — the of a corporation, in the within action; deponent has read the foregoing and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because is a corporation and deponent is an officer thereof.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me on 19

.....
The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

ADA E. TORRES being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at 116-14 124 Street, So. Ozone Park New York

Check Applicable Box

☒ Affidavit of Service By Mail — On November 27 1974 deponent served the within Answer upon Honorable Samuel M. Kaynard, Regional Director attorney(s) for in this action, at NLRB, Region 29, 16 Court Street, Brooklyn, New York the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

☐ Affidavit of Personal Service — ~~On 19 at~~ deponent served the within upon the herein, by delivering a true copy thereof to h personally. Deponent knew the ~~person so served to be the person mentioned and described in said papers as the~~ therein.

Sworn to before me on November 27, 1974

Ada E. Torres
The name signed must be printed beneath

NOTICE OF ENTRY

Sir:- Please take notice that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

Friedlander, Gaines, Cohen, Rosenthal & Rosenberg

Attorneys for

Office and Post Office Address

1140 AVENUE OF THE AMERICAS
NEW YORK, N. Y. 10036

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19
at M.

Dated,

Yours, etc.,

Friedlander, Gaines, Cohen, Rosenthal & Rosenberg

Attorneys for

Office and Post Office Address

1140 AVENUE OF THE AMERICAS
NEW YORK, N. Y. 10036

To

Attorney(s) for

40

Index No. 29-CA-3992 Year 19

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD, REGION 29

ARKAY PACKAGING CORPORATION

-and-

LOCAL 119B, GRAPHIC ARTS INTERNATIONAL UNION, AFL-CIO

ANSWER

Friedlander, Gaines, Cohen, Rosenthal & Rosenberg

Attorneys for Arkay Packaging Corporation

Office and Post Office Address, Telephone

1140 AVENUE OF THE AMERICAS
NEW YORK, N. Y. 10036
575-9100

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

.....

Attorney(s) for

RECEIVED
NLRB
REGION 29
'74 DEC 2 AM 9:48
BROOKLYN, N.Y.

BEST COPY AVAILABLE

GC 41 3rd R.C. 41.

GENERAL COUNSEL'S EXHIBIT 3

Form NLRB-502 (11-64)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Form Approved
Budget Bureau No. 64-R002.11

GC 41-3

PETITION

DO NOT WRITE IN THIS SPACE

CASE NO 2-RC-2717

DATE FILED 7-29-74

INSTRUCTIONS – Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.
If more space is required for any one item, attach additional sheets, numbering item accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. Purpose of this Petition *(If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.)*

(Check one)

- [X] RC-CERTIFICATION OF REPRESENTATIVE – A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- [ ] RM-REPRESENTATION (EMPLOYER PETITION)–One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- [ ] RD-DECERTIFICATION – A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- [ ] UD-WITHDRAWAL OF UNION SHOP AUTHORITY–Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- [ ] UC-UNIT CLARIFICATION–A labor organization is currently recognized by employer, but petitioner seeks clarification of placement of certain employees. *(Check one)* [ ] In unit not previously certified [ ] In unit previously certified in Case No. _____
- [ ] AC-AMENDMENT OF CERTIFICATION–Petitioner seeks amendment of certification issued in Case No. _____.

Attach statement describing the specific amendment sought.

2. NAME OF EMPLOYER: ARKAY PACKAGING CORPORATION
EMPLOYER REPRESENTATIVE TO CONTACT:
PHONE NO:

3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED *(Street and number, city, State, and ZIP Code)*: 22 Arkay Drive, Hauppague, New York

4a. TYPE OF ESTABLISHMENT *(Factory, mine, wholesaler, etc.)*: Factory

4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE: Folding Cartons

5. Unit involved *(In UC petition, describe PRESENT bargaining unit and attach description of proposed clarification.)*

Included: All skilled employees engaged in finishing activities, including lacquering, cutting & creasing, embossing, stamping and glueing; machine technicians, operators, assistant operators & trainees on all types of lacquering, cutting & creasing, embossing, stamping, die making, glueing &other equipment normally used in a folding carton finishing operation; all utility employees in connected finishing operations, such as strippers, feeders, catchers, packers, quality verifiers, material handlers, warehouse attendants, balers, shippers and receivers.

EXCLUDED: All employees engaged in preparatory offset & lithographic press operations, letter press employees, paper handlers, office clerical workers, salesmen, guards, watchmen and supervisors as defined in the Act.

6a. NUMBER OF EMPLOYEES IN UNIT: Approx. 70
PRESENT _____
PROPOSED (BY UC/AC) _____

6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT?* [X] YES [ ] NO
*Not applicable in R.M., UC, and AC

(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)

7a. [ ] Request for recognition as Bargaining Representative was made on _____ *(Month, day, year)* and Employer declined recognition on or about _____ *(Month, day, year)* *(If no reply received, so state)*

7b. [ ] Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

8. Recognized or Certified Bargaining Agent *(If there is none, so state)*
NAME: Graphic Arts International Union Local 119B, New York
AFFILIATION: Graphic Arts International Union
ADDRESS: 27 Union Square, New York, New York 10003
DATE OF RECOGNITION OR CERTIFICATION: 1962

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY *(Show month, day, and year)*:

10. IF YOU HAVE CHECKED BOX UD IN 1 ABOVE, SHOW HERE THE DATE OF EXECUTION OF AGREEMENT GRANTING UNION SHOP *(Month, day, and year)*:

11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S) INVOLVED? YES X NO

11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE PARTICIPATING? Approx. 70

11c. THE EMPLOYER HAS BEEN PICKETED BY OR ON BEHALF OF Local 1034, I.B. of T. & Graphic Arts International Union Local 119B, New York *(Insert name)* A LABOR (L.119B) – 6/11/74
ORGANIZATION, OF (L.1034) 221 Park Avenue South, New York, New York (L.119B) 27 Union Square, New York, New York *(Insert address)* SINCE (L.1034) – 7/1/74 *(Month, day, year)*

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11c), WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE (IF NONE, SO STATE)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM *(Required only if Petition is filed by Employer)*
NONE			

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.
Local 1034, I.B. of T. and Graphic Arts International Union Local 119B, New York
(Petitioner and affiliation, if any)

By: John C. Hill
(Signature of representative or person filing petition)
President of Local 119B
(Title, if any)

Address: (L.1034) 221 Park Avenue South, N.Y., N.Y. 10003
(L.119B) 27 Union Square, N.Y., N.Y. 10003
(Street and number, city, State, and ZIP Code)
(L.1034)-674-5005
(L.119B)-YU-9-0510
(Telephone number)

WILLFULLY FALSE STATEMENT ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

LIEBERMAN, ARONSON & ROSENBERG, ATTORNEYS FOR Local 119B

GENERAL COUNSEL'S EXHIBIT 5

29-R-24
(1-65)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

Arkay Packaging Corporation Employer Local 1034, I.B.T. and Graphic Arts International Union Local 119B Joint Petitioner	*	Case No. 29-RC-2717

NOTICE OF CONFERENCE

PLEASE TAKE NOTICE that a petition has been filed in the above proceeding alleging that a question concerning representation exists in a unit of employees alleged to be appropriate for the purposes of collective bargaining, as set forth in the petition. The unit described is as follows:

SEE ATTACHED PETITION

PLEASE TAKE FURTHER NOTICE that a conference will be held in this matter at the Regional office, 16 Court Street, Brooklyn, New York, Fourth Floor, on Wednesday August 28, 1974 at 10:00 AM o'clock, before Bruce R. Kettler

ALL PARTIES are requested to bring any contract or correspondence between any individuals or labor organizations and the employer pertaining to the representation of any of the employees in the unit or to a contract.

The Employer is requested to produce the completed commerce questionnaire and an alphabetized current list of employees in the unit together with their job classifications including employees who are ill, on vacation, in military service, or temporarily laid off.

Individuals or labor organizations claiming to represent employees in the unit, which have not already furnished the Board with proof of representation in the form of membership or application cards, dues records, contract, etc., must produce such evidence at the conference.

Labor organizations involved may, in certain situations, be deemed not to be a party in the proceeding if they do not present proof of interest at this conference.

PLEASE TAKE FURTHER NOTICE that if this conference does not result in a disposition of this matter a formal hearing will take place ~~MAY~~ IN THE IMMEDIATE FUTURE at o'clock at the Regional office.

Dated: Brooklyn, New York
August 13, 1974

Samuel M. Kaynard
Regional Director
16 Court Street
Brooklyn, New York 11201

TO:
1. Arkay Packaging
2. David Kramer, Esq.
3. Local 1034
4. Local 119 B
5. V. Aronson, Esq.
6. Anal. Lithographers, Local 1
7. Local 25, I.B.E.W.
8. Dist 15, I.A.M.
9. Local 51, Printing Pressmen
10. Printing Press Assts. Local 23
11. Paper Handlers, Local 1
12. Local 381, Folding Box Workers Union

GPO 922-881

GENERAL COUNSEL'S EXHIBIT 6

G.C. 43 6 for id
in 2/1-71

FRIEDLANDER, GAINES, COHEN, ROSENTHAL & ROSENBERG
COUNSELLORS AT LAW
1140 AVENUE OF THE AMERICAS
NEW YORK, N.Y. 10036
(212) 575-9100

SIDNEY GAINES
JOSEPH S. ROSENTHAL
STEPHEN A. COHEN
HARVEY P. ROSENBERG
EDWARD CHERNEY
MARTIN J. HERTZ
JULES B. LEVINE
DAVID KRAMER
BARRY M. RUDERMAN
MICHAEL V. MERMEY
JEFFREY D. STREISFELD
EDMUND BIRNBAUM
STEPHEN J. WEISS

NORBERT RUTTENBERG, COUNSEL
HENRY G. FRIEDLANDER (1955-1965)

CABLE ADDRESS
"FRAINES"

WESTCHESTER OFFICE
35 WINTHROP AVENUE
NEW ROCHELLE, N. Y. 10801
(914) 633-8090

August 6, 1974.

Mr. Bruce Kettler
National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York 11241

Re: Arkay Packaging Corporation
Case No. 29-RC-2717

Dear Mr. Kettler:

Enclosed is a completed Notice of Appearance Form in the above entitled matter. Also enclosed is a copy of the expired Contract between New York Paper Cutters' & Bookbinders' Union No. 119 and Printers League Section Printing Industries of Metropolitan New York, Inc.

In addition to Local 119 B of the GAIU, Arkay Packaging Corporation has collective bargaining agreements with:

Amalgamated Lithographers
Local No. 1
113 University Place
New York, N. Y. 10003

Local 25 I.B.E.W.
425 Broadhollow Road
Melville, New York

District 15 I.A.M.
7 East 15th Street
New York, N. Y. 10003

The employer also had contracts with three other labor organizations whose members were all permanently replaced after they violated their no strike agreements and

refused to cross a picket line established by Local 119 B. These three Unions are:

New York Printing Pressman and Offset
Workers Union Local 51
200 Park Avenue South
New York, N. Y. 10003

New York Printing Press Assistants' & Offset
Workers' Union No. 23
212 West 15th Street
New York, N. Y. 10011

Paper Handlers and Sheet Straighteners
Local No. 1
150 Nassau Street
New York, N. Y.

In addition, we are advised that Local 381 Folding Box - Corrugated Box and Display Workers, 170 Old Country Road, Mineola, New York 11501, may claim to represent the employees in the proposed unit.

Please be advised that Local 1034 I.B.T. has never represented any employees of the employer in the proposed unit, or any other unit, and as far as we are able to determine does not represent any employees at this time. The alleged interest of Local 1034 in representing employees in the proposed unit raises serious questions as to the appropriateness of the unit. At this time it is impossible to determine whether a question concerning representation exists since the employer has been bargaining in good faith with Local 119 B for a contract covering employees in the Finishing Department. In addition to the numerous and complex questions raised by the petition as to the appropriateness of the unit, whether a question concerning representation exists, there is an issue as to the eligibility of approximately 50 strikers, some of whom have been arrested for violence on the picket line.

As soon as the information can be obtained I will send you an alphabetized list of employees, together with their job

classifications for the July 25, 1974 payroll period in the unit described in the petiton.

Very truly yours,

FRIEDLANDER, GAINES, COHEN,
ROSENTHAL & ROSENBERG

David Kramer

DK/md

Enclosures

GENERAL COUNSEL'S EXHIBIT 8 G.C. Ex. 10 Int. A G.C. Ex 8 in FU- Th 2/5/75

SPEECH GIVEN BY HOWARD BATES 8/22/74

TO ARKAY EMPLOYEES

The following statement was made prior to speech:

Normally, fellows, I like to talk without any written documents in front of me so that I can talk a little closer to you, man to man. However, this statement is so important and can so easily be misconstrued in legal terminologies in the future that you can well understand why I am about to read this statement.

An employer cannot make a promise of benefit nor grant a promise of benefit prior to an election. An employer cannot make any threat of any detrimental action prior to an election. On the other hand, unions can make any promises they want and practically any threats they want short of physical violence.

Statement:....There will be an election held by the National Labor Relations Board. At the election you will be given ballots. You will vote in secret. No one will see how you voted. On the ballot you will be given two choices: YES or NO. A vote YES is for Joe Hellman and the Teamsters. A vote NO is for Arkay. The real problem in voting YES for Joe Hellman is that it is not a vote for Hellman or the Bookbinders. It is really a vote for the Teamsters. If you vote YES you may be voting yourself out of a job. Hellman's purpose in winning the election is to force Arkay to sit down and negotiate to put back each and every striker to work. If they do that, then you will be out of a job. Hellman does not have your interests at heart. He is solely committed to getting you out of Arkay and putting a member of his union in your job. Eventually anyone who is in the plant, should Hellman win, will not be paying dues to the Bookbinders or getting benefits from the Bookbinders. They will find themselves paying dues to the Teamsters and getting whatever benefits the Teamsters have to offer. They will lose every benefit that they have ever gotten or hope to get under the Bookbinder Welfare and Pension Plans.

ORIGINAL

OFFICIAL REPORT OF PROCEEDINGS

COURT COPY

BEFORE THE

National Labor Relations Board

DOCKET NO. 29-CA-3992

IN THE MATTER OF:

ARKAY PACKAGING CORPORATION

PLACE: Brooklyn, New York

DATE: Feb. 5, 1975

District 1

PAGES: 1-141

Volume II

C. S. A. REPORTING CORPORATION
Official Reporters
300 Seventh Street, S.W. Washington, D. C. 20024
393-2320

BEFORE THE NATIONAL LABOR RELATIONS BOARD

29th REGION

In the Matter of:	
ARKAY PACKAGING CORPORATION	
and	Case No. 29-CA-3992
LOCAL 119B, GRAPHIC ARTS INTERNATIONAL UNION, AFL-CIO	

16 Court Street,
Brooklyn, New York
Wednesday February 5, 1975

The above-entitled matter came on for hearing, pursuant to notice, at 10:15 o'clock, a.m.

BEFORE:

THOMAS E. BRACKEN, Administrative Law Judge

APPEARANCES:

HOWARD EDELMAN, Esq.	Brooklyn, New York, appearing on behalf of the Counsel for the General Counsel.
HUGH P. HUSBAND, JR., Esq.	Bridgehampton, New York, appearing on behalf of the Respondent.
VINSON C. ARONSON, Esq.	Law firm of Lieberman, Aronson & Rosenberg, 1501 Broadway, New York, New York, appearing on behalf of the Charging Party.

CSA Reporting

difference in the attorneys who filed the answer and yourself, but you have adopted the answer?

MR. HUSBAND: Yes, I have, your Honor.

JUDGE BRACKEN: All right.

General Counsel, will you call your first witness.

MR. EDELMAN: Yes, your Honor, counsel for the general counsel will call Joseph Hellman.

Whereupon,

JOSEPH HELLMAN

was called as a witness and, having been first duly sworn by Judge Bracken, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Edelman) Mr. Hellman, are you employed by Local 119B?

A Yes.

Q Your position with Local 119B?

A President.

Q How long have you been president?

A Since 1954.

Q I take it then you are familiar with the activities of your labor organization?

A That's right.

Q You are familiar with who your labor organization has collective bargaining agreements with?

A Yes.

CSA Reporting

Q Do you have or did you have a collective bargaining agreement with an employer association of which Arkay was a member?

A Yes, sir.

Q How long have you had this collective bargaining relationship with, A, the association and, B, Arkay as a member of the association?

A Well, our records show that Local 119B had collective bargaining agreements with Arkay going back to around 1948.

Q All of which time I take it Arkay was a member of the association?

A I'm not too sure if they were members going back that far but since 1954 they were members of the association.

Q What is that association?

A Called Printers League Section of the printing industries of metropolitan New York.

Q When was the last contract that you had with this association?

A We have a contract with him now.

Q I stand corrected.

When was the last contract that you had with the association of which Arkay was a member?

A Expired February 18, 1973.

Q Do you have a copy of that contract with you?

A Yes.

MR. EDELMAN: I would like to have this contract marked General Counsel Exhibit No. 2 for identification, please.

(Contract marked General Counsel Exhibit 2 for identification, of this date)

Q Mr. Hellman, I show you a contract marked General Counsel Exhibit 2 for identification and ask you to look it over and tell me if you can identify it.

A Yes, I can.

Q Will you tell me what it is?

A It is a copy of a collective bargaining agreement that we had with the association, the Printers League Section covering shops that were members of the association.

Q And Arkay was a member of that association?

A Yes.

Q And bound by the terms and conditions of this agreement?

A Yes.

Q I notice the agreement lists the union as the New York Paper Cutters and Bookbinders Union No. 119 which is not the present name of your local; is that correct?

A That's right.

CSA Reporting

Q Can you tell me how this change came about and exactly what the change was?

A During the term of this contract with the Printers League our international union, at the time the International Brotherhood of Bookbinders merged with the lithographers and photographers international union to become the Graphic Arts International Union.

This merger officially took place on Labor Day, 1972.

We were mandated to change the name of our local union subsequently to the Graphic Arts International Union Local 119B.

Q I take it it is the same union at this time with a different name.

A That's right.

MR. EDELMAN: I would move to introduce at this time the exhibit marked GC-2 for identification into evidence and at this time I show a copy to Respondent's counsel.

JUDGE BRACKEN: What was the period of that General Counsel Exhibit 2, Mr. Edelman?

MR. EDELMAN: 1971 to 1974, your Honor.

JUDGE BRACKEN: Can you give me more specific dates than that?

MR. EDELMAN: Yes, as soon as I look it over.

JUDGE BRACKEN: Any objection, Mr. Husband?

MR. HUSBAND: No objection.

JUDGE BRACKEN: It may be received.

(General Counsel's Exhibit 2 for identification received in evidence, of this date)

MR. EDELMAN: The term of the contract shall be effective June, 1971 and shall continue in effect through and including February 28, 1974.

Q Now, Mr. Hellman, did there come a time when Arkay gave the union notice that they were leaving the association?

A Yes.

Q On or about when did that notice take place?

A The end of 1973.

Q I take it the terms of that contract expired as set forth in the agreement, there was no extension?

A That's right.

Q It expired the 28th of February?

A That's right.

Q Did there come a time when you began to negotiate with Arkay on an individual basis?

A Yes.

Q And on or about when did you begin negotiations?

A I believe sometime in February of 1974.

Q Did you take part in these negotiations?

A Yes.

Q Anybody else from the union take part with you?

A Yes, Mr. Edward Ruggiero.

Q Who is Mr. Ruggiero?

A He is business representative of our Finishing Division.

Q Who were the bargaining representatives for Arkay?

A At some of the meetings Mr. Howard Kaneff.

Q Who is Mr. Kaneff?

A I believe he is the president of the company.

Mr. Howard Bates attended.

Q Mr. Bates was at that time?

A Vice president, I believe, and Mr. David Kramer, attorney for the company, and on occasion, Mr. Roche.

Q Negotiations took place over a period of time I take it?

A Yes.

Q And there were a number of negotiations?

A Yes.

Q Did there come a time when negotiations terminated?

A Yes.

Q On or about when did they terminate?

A June 10th.

Q Why did the negotiations terminate on that date?

A We couldn't reach an agreement for a new contract.

Q Did the union take any action in this connection?

A Yes, we struck the plant on June 11th.

Q At the time of the strike, just prior to the strike how many employees at Arkay were represented by Local 119B?

A Well, on occasion we had as many as 70 people in the plant.

I would say that when we went out on strike we might have had in the 60's or 60 approximately.

Q During these negotiations that took place between February and June 10th what were the stumbling blocks, if there were any particular stumbling blocks, that existed and prevented the parties from reaching an agreement?

A The major stumbling block were the working hours.

The company wanted a 37 1/2 hour work week and we had a 34 1/2 hour work week.

Q In your prior contract?

A Right.

Q Is there any union in the area in the industry that had such a work week?

A Local 381 of the International Paper Workers Union.

Q During the course of negotiations did this topic come up?

A Oh yes, frequently.

Q What was the company's position with respect to Local 381 during the negotiations?

A Well, they used the terms of the 381 contract in trying to convince us, you know, that they needed relief and that they wanted matching conditions.

Q Are you familiar with the 381 contract?

A Yes.

Q Have you ever seen it?

A Yes.

Q Have you ever studied it?

A Yes.

Q After the strike began did you at that time have any further discussions with any representatives from Arkay?

A Yes.

Q Who did you have discussions with?

A A couple of days after the strike started I had an informal meeting with Mr. Howard Kaneff.

Q Where did you meet?

A We met at a coffee shop, at the Olympic Lodge.

Q Was anybody present with Mr. Kaneff?

A He was the only one from the company.

Q Anybody present with yourself?

A Mr. Bill Scintera.

Q Who is Mr. Scintera?

A President of Local 51 of the Printing Pressmen's Union. He arranged the meeting.

Q I take it that is another related union in the general field of printing?

A They have a contract with Arkay Packaging Corporation.

Q Representing different employees?

A Representing pressmen on the letter presses.

Q Can you tell me, please, what discussion took place during this meeting?

A Mr. Scintera was not present at the meeting. Mr. Kaneff didn't want him present at the meeting.

Mr. Kaneff and I talked briefly and to see what we could do to resolve the issues, to terminate the strike.

Mr. Kaneff reiterated that he needed relief in the hours and he wanted a 37 1/2 hour week, and I told him I couldn't give him 37 1/2 hour week because all our shops were working 34 1/2.

I did, however, offer concessions for new hirees.

Q I take it no agreement was reached?

A No agreement was reached.

Q During the course of the strike did you receive word at any time about any other union coming in with respect to the unit of employees that you represented?

A A few days after the strike started I was getting reports from the picket line that members of 381 were going in to work in the plant.

Q Did you have conversation with these pickets?

A Some directly and some indirectly.

Q When you say indirectly, through some officer in the union that had conversations with them?

A Yes.

Q In connection with discussions that you had with these pickets did they indicate to you why Local 381 members were going in to work?

MR. HUSBAND: I will object to this. I have been tolerant up to now but this is rank hearsay.

JUDGE BRACKEN: Objection sustained.

Be more specific in your questions, Mr. Edelman.

MR. EDELMAN: All right, I will.

Q With respect to your conversations as to the pickets -- well, let me go back.

Mr. Hellman, in the first place with respect to Mr. Husband's objection, it is a valid objection if I were trying to bind the company on the statement. I was not. I was merely trying to elicit information to show certain action that was later taken by Mr. Hellman, not for the truth of the statement. But I will withdraw the question and rephrase it.

Q With respect to conversations that you had with pickets can you recall anything further that was discussed?

A They discussed the fact that they recognized members of 381 going into the plant, crossing a picket line.

Some of our people who are out on strike worked with these people formerly and asked them as they went in why they were going through this picket line, through 119's picket line and some stated they were ordered to do so by members of their union.

Q Did you take any action upon the receipt of this information?

A Yes, I did.

Q What action did you take?

A I called the president of 381, Benny Cianciulla.

Q In any event you called Mr. Cianciulla?

A Yes.

Q Did you have a conversation with him?

A Yes, I had a number of conversations with him on the subject.

Q Beginning when did you have your first conversation with him, on or about?

A I would say shortly after the strike started.

Q A week after?

A A week, a week to 10 days after, yes.

Q What was your conversation with Mr. Cianciulla?

A I told him that I learned that members of his union were being sent in to Arkay Packaging.

He denied that he was sending anybody in to Arkay Packaging but did concede that it was possible that some of his members were going into the shop soliciting jobs on their own.

Q After this conversation with Mr. Cianciulla did you have occasion to have further conversations with him?

A Yes.

Q Was there any particular action or any particular reason for having further conversations with Mr. Cianciulla?

A Well, the reports I was getting from the picket line was that more and more members of Local 381 were going into the plant.

I called Mr. Cianciulla to confront him with this and he then did concede that there were people from his union, representatives from the union sending these people in to work but he had nothing to do with it personally.

Subsequently, I received a notice from the board concerning a reference relative to a petition we had filed.

Q Did there come a time when you filed a petition for an election at Arkay?

A Yes.

Q Did you file that as Local 119B or jointly with another union?

A Jointly with another union.

Q What was that other union?

A Local 1034 Teamsters.

MR. EDELMAN: I would like to have this marked General Counsel Exhibit 3 for identification.

(Document marked General Counsel Exhibit 3 for identification, of this date)

Q I show you General Counsel Exhibit 3 marked for identification and ask you if you recognize that.

A Yes.

Q Can you tell me what that is?

A Petition filed by Local 119B.

Q That is dated 7/29/74. Is that when you filed?

A Yes.

MR. EDELMAN: I show the exhibit to counsel for respondent.

MR. HUSBAND: No objection, your Honor.

JUDGE BRACKEN: General Counsel Exhibit 3 will be received.

(General Counsel's Exhibit 3 for identification received in evidence, of this date)

Q In connection with this exhibit, GC-3, the petition,

did you receive any correspondence from the National Labor Relations Board?

A Yes.

MR. EDELMAN: I would like to have, if we can save time, I would like to have this marked GC-4 which is the board letter dated August 9th, and as GC-5 which is the board letter dated August 18th.

(Documents above described marked respectively General Counsel Exhibits 4 and 5 for identification, of this date)

Q I show you GC-4 for identification and ask you if you received that letter.

A Yes.

Q And I show you GC-5 and ask you if you received that letter.

A Yes.

MR. EDELMAN: I would like to point out at this time, your Honor just so your attention may be directed to where I am going with the letter, that the letter which is not yet in evidence lists as unions to whom it was sent Local 381 and one is a notice of conference letter and the other is a letter indicating that the petitioner had been assigned to a particular board agent to whom it was assigned, namely, Bruce Kettler. I am going to move --

JUDGE BRACKEN: Which exhibit number was the notice of conference?

MR. EDELMAN: The notice of conference is Exhibit 5 and the letter advising that a petition has been filed is Exhibit 4.

I will show the letters to counsel for respondent.

MR. HUSBAND: I don't want to unnecessarily object, your Honor. I just want to know how much weight or what relevance we can attach to the fact that among 12 unions that are listed are 12 parties that are listed as 381.

If you are going to put someone on to connect and show some relationship --

MR. EDELMAN: I will try to connect it with the next exhibit.

MR. HUSBAND: You know, identifying through it because I never even had seen that before --

MR. EDELMAN: I will get you copies.

JUDGE BRACKEN: As a matter of fact, Mr. Edelman, you will give copies of all these exhibits to counsel for the respondent?

MR. EDELMAN: Yes, of course.

JUDGE BRACKEN: You may proceed.

MR. EDELMAN: I think if there is no objection to its receipt.

MR. HUSBAND: No.

it is secondhand hearsay in nature as to the actuality of who did ask the agent.

JUDGE BRACKEN: Did you know this agent's voice?

THE WITNESS: No, I wouldn't, could not honestly say.

MR. EDELMAN: I withdraw the question, your Honor, and instead propose, instead mark the letter dated August 6th as General Counsel's Exhibit No. 6.

(Document marked General Counsel Exhibit 6 for identification, of this date)

MR. EDELMAN: The letter is a letter from Friedlander, signed by David Kramer and I will produce the original and possibly we can get a stipulation as to that.

MR. HUSBAND: No objection.

MR. EDELMAN: And I would like to direct your Honor's attention on that exhibit which is now in evidence to --

JUDGE BRACKEN: Since there is no objection it will be received in evidence.

(General Counsel's Exhibit 6 for identification received in evidence, of this date)

MR. EDELMAN: The point of the exhibit is contained on the second page and I would like for your own convenience just to direct you to that portion of the letter that I deem relevant, and the reason that I am

introducing it in the first place.

JUDGE BRACKEN: You may proceed.

MR. EDELMAN: The portion that I am introducing it for is the second page.

JUDGE BRACKEN: That is a letter from -- the name of the firm and date?

MR. EDELMAN: The letter, the Exhibit GC-6. It is a letter dated August 6th from Friedlander, Gaines, Cohen, Rosenthal and Rosenberg, law firm, signed by David Kramer, the attorney who represented the respondent at the time.

MR. HUSBAND: I will so stipulate.

JUDGE BRACKEN: It is addressed to whom?

MR. EDELMAN: And the portion of the exhibit that I seek to direct your Honor's attention to is the second page in the middle of the page which states:

"In addition we are advised that Local 381, Folding Box-Corrugated Box and Display Workers, 170 Old Country Road, Mineola, New York 11501, made claim to represent the employees in the proposed unit."

JUDGE BRACKEN: That letter is addressed to whom?

MR. EDELMAN: That letter is addressed to the board.

More particularly it is addressed to Board Agent Bruce Kettler.

JUDGE BRACKEN: It shall be received.

Q Mr. Hellman, do you recall meeting with company representatives subsequent to the strike for a second meeting?

A The meeting that I attended I believe was at the invitation of Mr. Matt Miller, federal mediator.

Q Where did the meeting take place?

A Hempstead, Long Island at the federal mediation office.

Q Who was present for the union?

A Mr. Edward Ruggiero and myself.

Q And for the company?

A Mr. David Kramer, Mr. Howard Bates and Mr. Howard Roche.

Q Can you tell me what took place during the course of this meeting?

A The company started off by saying they were no longer hurting, that things were going well, they had things pretty well under control.

I accused them at the time of bringing 381 in there to do our work.

The federal mediator then separated the parties and then he came in to see Mr. Ruggiero and myself and he said it didn't look like there was any chance of settling this because the company was insisting on a 37 1/2 hour week and he knew from personal experience

dealing with out international union that there was no chance of us going to a 37 1/2 hour week.

He said he told that to the company. Then he brought the parties together again in the room and announced that we would be subject to call whenever he thought the time was appropriate.

Q This meeting took place on or about what date?

A At the end of July, I would say. I think it was the 29th of July, '74.

Q Did you have any further meetings with any company representatives?

A Yes.

Q When was that meeting?

A I think it was the end of September.

Q Where did it take place?

A At Commissioner Lou Tempera's office, the Industrial Commissioner of Suffolk County.

Q Who was present for the union?

A Present for the union again was Mr. Edward Ruggiero and myself and Mr. Bill Scintera from Local 51.

Q Who was present for the company?

A Mr. Howard Bates and Mr. David Kramer.

Q Can you tell me what took place generally during this meeting?

A Got into a heated argument. We, the union, Mr.

Scintera, accused the company of bringing people into the plant, making a deal with 381 and -- no, no, I'm a little ahead of myself.

The company attorney started off by saying that he couldn't negotiate with us because we no longer represented a majority of the people, that there were more people employed on the inside than we had on strike and he was prohibited from negotiating with us because of this, and it was just a matter of time before we would be decertified.

At that time Mr. Scintera and I accused him of loading the plant with members of 381, working with Local 381 and it was no longer an economic strike, it was an unfair labor practice strike.

At this stage Commissioner Tempera separated us and after he spoke to management he came back to our room where we were waiting and he said the company told him that they had things pretty well under control, they weren't hurting at this stage, he says as long as 381 was in there, he says, forget it, you are not going to be able to terminate this strike successfully. You have got to get 381 out of there.

Then he called the parties together and he also stated that we should be on call -- we would be on call and he would get in touch with us if he thought another

meeting was appropriate.

Q Mr. Hellman, you mentioned in your testimony that, you stated that it was an unfair labor practice strike; is that correct?

A Right.

Q Was this the first time you stated this to the company or anybody else, either the union or the pickets?

A Well, in discussing with the pickets the situation about 381 going in there we told them this was an unfair labor practice and we would be obliged to --

MR. HUSBAND: Objection to that as to relevance of what he told the pickets.

JUDGE BRACKEN: Objection overruled.

A (Continuing) The pickets were complaining, that is the proper word, that things were not going well for them because of all the people from 381 that were going in towork and what was the union doing about it.

I told them then that it was now no longer an economic strike, it was an unfair labor practice strike because based on the information we were receiving, the company was violating the law.

Q When did these conversations with these pickets take place? Over what period of time?

A I would say it started towards the latter part of July into August.

Q When did you first receive reports from the pickets as to members of Local 381 going to work?

A A few days after the strike started. I'd say about a week to 10 days later.

Q You had conversations with pickets at this time?

A Yes.

Q In connection with your conversations with pickets at this time what, if anything, did you tell the pickets?

A I told the pickets that I was going to check with Local 381, which I did, and which I have already testified to.

Q Did you have conversations with the pickets in the beginning of July?

A Yes.

Q What if anything did you tell the pickets during the beginning of July?

A Well, I told them that the reports -- rather, I told them my conversations with Mr. Cianciulla who denied that the union was sending people in but if what the pickets were telling me was true and based on the information we were getting, that the company would be in violation of the law, but we would have to have some definite information.

Q You testified at some point in time you informed the pickets that the strike was an unfair labor practice

strike?

A Yes.

Q And on or about when did you first inform the pickets that this was so?

A I told them that this was so in the beginning of July when they repeated the fact that more and more people of 381 were going into the plant.

Q In connection with Local 381's activities did you take any action within the AFL-CIO?

A Yes.

Q What action did you take?

A We filed a complaint with President George Meaney's office charging the International Paper Workers Union with violations of Article 20 of the AFL-CIO Constitution and By-laws relative to raiding.

MR. EDELMAN: I would like to have this marked GC-7, please, for identification.

(Document marked General Counsel Exhibit 7 for identification, of this date)

Q There did come a time when the AFL-CIO Internal Disputes Plan issued a decision in connection with this issue?

A Yes.

Q I show you GC-7 for identification and ask you if you can identify that, please.

(Whereupon the last answer was read by the reporter)

MR. HUSBAND: No further questions.

JUDGE BRACKEN: Mr. Edelman?

MR. EDELMAN: I have no redirect.

JUDGE BRACKEN: Mr. Hellman, you may step down.

Will general counsel call its next witness.

MR. EDELMAN: General counsel calls Roy Wolmart.

Whereupon

ROY WOLMART

was called as a witness and, having been first duly sworn by Judge Bracken, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Edelman) Mr. Wolmart, are you presently employed by Arkay?

A Yes, sir.

Q On or about when did you begin work at Arkay?

A The end of June.

JUDGE BRACKEN: Fix the year.

Q That is the 1974 I take it.

A Yes.

Q In what department were you employed?

A Stamping department.

Q Is that the gold stamping department?

A Right.

Ray.

Q Do you know who he was referring to when he said Ray?

A I assume he said Ray Erario.

Q Did you read the card? Did you look at the card?

A Yes.

Q Do you recall what lettering the card had on it?

A AFL-CIO. That's all I know.

Q Did it have any other lettering in addition to AFL-CIO, do you recall?

A No, I don't recall.

Q Do you recall that it referred to a corrugated box local?

A No.

Q Do you recall 381 being on the card?

A No.

Q What did you do with the card?

A Brought it home and left it there.

Q Did there come a time when you signed the card?

A Yes.

Q What did you do with the card after you signed it?

A Gave it back to John.

Q John Muratore?

A Right.

Q Are you a present member of an employee committee?

A Yes.

Q Are you a delegate in this employee committee?

A Yes.

Q Can you tell me how this committee came to be formed?

A The working people got together and wanted some representation for themselves to management.

Q Was there an election in connectin with this committee?

A Yes.

Q Were these elections department by department?

A Yes.

Q Can you tell me how these elections took place?

A Verbal.

MR. HUSBAND: I will object to this line. it is completely irrelevant to the charges, the complaint that we are faced with.

MR. EDELMAN: I will connect it.

JUDGE BRACKEN: You will connect this up? Objection overruled.

Q Was there any election that took place in connection with your department?

A Yes.

Q Was there any delegate elected in your department?

A Yes.

Q Who was the delegate elected?

A Me.

Q Were there delegates elected in other departments?

A Yes.

Q Did there come a time when these delegates met with representatives from Arkay?

A Management?

Q Right.

A Yes.

Q Were you present at this session?

A Yes.

Q Can you tell me who from management was present?

A Mr. Kaneff, Bill Roche and John Rizzo.

Q John Rizzo?

A Right.

Q When did the meeting take place?

A Two weeks ago.

Q Where did it take place?

A In the shop, in the conference room.

Q About what time did it take place?

A Three o'clock in the afternoon.

Q That was during working hours?

A Yes.

Q Was anything discussed at this meeting?

A Yes.

Q Can you tell me what was discussed?

A The ground rules by which management and working people feel they should be represented and meet each other.

Q Do you remember any specific topics that were discussed at this meeting?

A Mainly hours.

Q Hours of work?

A Right, overtime.

Q Overtime was discussed?

A Right.

Q What else was discussed?

A Latenesses, absentees.

Q About how long did this conversation take?

A An hour and a half.

Q Have you had any further sessions?

A Yes.

Q Pardon?

A Yes.

Q When did you have your next session?

A Yesterday.

Q Who did youmeet with?

A Bill Roche and John Rizzo.

MR. EDELMAN: Can we get a stipulation on John Rizzo? His name is new to me.

MR. HUSBAND: He is in the complaint.

MR. EDELMAN: Rizzo?

MR. HUSBAND: I believe so.

No, you are right, it isn't. Plant superintendent, and he is a supervisor within the meaning of the act.

Q Can you tell me what was discussed?

JUDGE BRACKEN: It is stipulated by and between the parties that Mr. John Rizzo is the plant superintendent and is a supervisor.

MR. HUSBAND: Within the meaning of the act.

JUDGE BRACKEN: It shall be received.

A Can you tell me what was discussed at this session?

A The same things we discussed in the first session.

MR. EDELMAN: Your Honor, I have no further questions of the witness but I would at this time move to amend the complaint which we have before you to include an allegation that the company has further engaged in violations of 8a1 and 2 of the act by recognizing and negotiating with the employee committee wages, hours and other conditions of employment at a time when an RC petition is presently pending and there is a question concerning representation.

JUDGE BRACKEN: Mr. Husband.

MR. HUSBAND: If we go into that I would like to get an adjournment of about two weeks to prepare.

I can see absolutely no relevance. From the man's

own statement the committee was completely formed by the employees.

There is abolustely no implication whatsoever of any 2 violation.

As to the pending CR, that is blocked by the other.

Are you saying that management, that no management can ever recognize an employee committee formed by the employees themselves because it is litigating and something that may be litigated for a year and a half?

MR. EDELMAN: It is general counsel's position that there is a question with reference to representation pending at the present time and management violates 1a2 of the act by bargaining and recognizing what amounts to another labor organization.

JUDGE BRACKEN: Well, I am going to permit the amendment but I am certainly going to give you, Mr. Husband, the opportunity to meet this new amendment.

How much time you will need on it we will have to discuss later in the day but certainly I will give you the opportunity to.

MR. HUSBAND: Thank you.

MR. EDELMAN: I have no further questions, your Honor.

JUDGE BRACKEN: Your witness, Mr. Husband.

CROSS EXAMINATION

Q (By Mr. Husband) Mr. Wolmart, did you make a

one further point and that is with respect to matters that he goes into that exceed the scope of the direct and in that sense he makes the witness his own witness.

MR. HUSBAND: I accept. I wouldn't lead, your Honor.

MR. EDELMAN: Now, if we may be off the record a second.

JUDGE BRACKEN: Off the record.

(Discussion off the record)

JUDGE BRACKEN: Back on the record.

In an off-the-record discussion between the general counsel and counsel for the respondent counsel discussed a printed speech that was furnished by the respondent employer to the board in the process of investigating this case.

Mr. Edelman, you were going to make a statement stipulating as to what that document does.

MR. EDELMAN: Yes, your Honor. The document is the speech given by Howard Bates to the employees of Arkay on 8/22/74, and we will stipulate that Mr. Bates made remarks set forth in the exhibit to assembled employees.

We will stipulate that far. It is general counsel's position that in addition to the remarks set forth in the exhibit Mr. Bates made other remarks but we will

stipulate that he did make the remarks set forth in the speech.

MR. HUSBAND: We will so stipulate.

JUDGE BRACKEN: Let that be entered into the record and that will be received as General Counsel's Exhibit 8.

(Document marked General Counsel's Exhibit 8 for identification and received in evidence, of this date)

Q (By Mr. Husband) I would hand you GC Exhibit 8 and ask you to read that and then I will ask you questions about it.

Do you recall hearing Mr. Bates read this matter off to a group of assembled employees?

A Yes.

Q Do you recall if it was on August 22nd?

A I couldn't pinpoint the exact date.

Q Do you remember where you were when it was read to you?

A Yes.

Q Where?

A Cafeteria.

Q At Arkay Packaging?

A Right.

Q Were you fairly near to Mr. Bates?

A Yes.

REDIRECT EXAMINATION

Q (By Mr. Edelman) Mr. Wolmart, how long did Mr. Bates speak to the employees when he made a speech?

A Roughly 15 minutes.

Q About 15 minutes? Do you recall what Mr. Bates said in that 15 minutes?

A He said that speech.

Q Well, without looking at that speech can you recall what Mr. Bates said?

A No.

Q You cannot?

A No.

Q Would it be fair to say that your independent recollection as to any remarks made in this speech is unclear?

A I don't know what you mean.

Q I will rephrase it.

Would it be fair to say you can't remember what Mr. Bates said at that speech?

A I remember some things.

Q What did Mr. Bates say at the speech that you can remember?

A He said "I'm going to" -- something to do with "I'm going to read this to you so that if anybody asks you any questions I read this word for word".

A Yes, he would.

MR. HUSBAND: No further questions.

MR. EDELMAN: I have nothing further.

JUDGE BRACKEN: You may step down.

MR. EDELMAN: Counsel for the general counsel calls as its next witness Roy Pitkanen.

Whereupon

ROY PITKANEN

was called as a witness and,having been first duly sworn by Judge Bracken, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Edelman) Mr. Pitkanen, are you presently employed?

A No.

Q Were you ever employed by Arkay?

A Yes.

Q On or about when did you begin your employment at Arkay?

A Early to middle August.

Q Of 1972?

A Yes.

Q What type of work did you do when you were there?

A I was a sealer.

Q In what department was that, do you know?

A I believe that is gluing.

Q Gluing department?

A I believe so.

Q First of all, did you know or recognize Howard Bates?

A I became familiar with the people.

Q Do you recall being present in the shop when Howard Bates spoke to the employees?

A Yes.

Q Was that on or about August 22nd?

A Yes.

Q Can you tell me when Mr. Bates spoke to the employees?

A The cafeteria of Arkay.

Q Can you tell me what time he spoke to the employees.

A Quarter after 3.

Q Was this during working hours?

A Yes.

Q How long did Mr. Bates speak to the employees?

A From about a quarter after 3 to about 20 to 4.

Q I am going to ask you if you will, to tell me exactly what you recall Mr. Bates said.

A I recall he said -- he started saying how the company -- he thought the company was doing quite well considering all the new people they had. He said the waste of the company was very high.

Then he started talking about the strike and he said he wanted to get -- he said they were trying -- I don't recall whether he said trying or thinking about getting another union in.

He didn't -- I don't recall if he said a union or not, and he said "If you vote for the union they wanted to get in it would be a vote for your job. If you didn't vote for the union it would be a vote for your job.

MR. HUSBAND: Could I ask him to read that back, that last answer? Could I ask the witness to speak up a little.

JUDGE BRACKEN: You are going to have to speak up much louder now because we just can't hear you. The court reporter is sitting three feet and I'm sitting four feet from you and we can't hear you so counsel can't hear you.

So with that young strong body you will have to speak up much louder.

You may proceed and clarify the record any way you see fit.

Q What else did he say?

A Then he mentioned he had to do something about Hellman and his mob and he made a motion towards where they were picketing outside.

Q When he spoke about this other union did he mention the name of the union?

A That I don't recall. I don't believe he did.

Q You don't believe he mentioned the union or you don't recall the name of the union that he mentioned?

MR. HUSBAND: I am going to object. The witness said what he said very clearly.

JUDGE BRACKEN: Objection overruled.

A (Continuing) I don't really recall if he did or didn't. I wouldn't know.

Q Do you recall anything further in connection with what Mr. Bates said?

A No, not really.

Q Did you discuss the benefits?

A Oh yes. He said the union they wanted to bring in would be cheaped to join and have better benefits for everybody.

Q You testified to some degree that he discussed the matter of voting for unions.

Can you tell me what he said about voting for the unions again?

A He said if you vote for the union that was going to be brought in it would be a vote for your job. If you voted against it would be a vote against your job.

Q You testified the meeting ended on or about 20 to 4; is that correct?

A It was after 3:30.

MR. EDELMAN: No further questions.

RECROSS EXAMINATION

Q (By Mr. Husband) When you got there at 3:15 how many people were there then?

A Everybody.

Q Did you wait for anybody else or were you the last one there?

A I don't know. I just walked in. Everybody else seemed to be there.

Q Was there anyother discussion or anything before Mr. Bates began?

A I don't recall.

Q Were you present at any other employee meetings during your short stay at Arkay?

A No.

MR. HUSBAND: No further questions.

MR. ETELMAN: I have nothing further.

JUDGE BRACKEN: You may step down.

MR. EDELMAN: Counsel for General Counsel calls Thomas Cybulski, please.

Whereupon,

THOMAS CYBULSKI

was called as a witness, and having been first duly sworn by Judge Bracken, took the stand and testified as follows:

DIRECT EXAMINATION

time?

MR. HUSBAND: I don't know any Russo.

Q Rizzo?

A Rizzo, that's it, John Rizzo.

MR. Roche was the plant superintendent at that time.

MR. EDELMAN: And Legault?

MR. ROCHE: Roy Legault was in charge of pringing, printing superintendent.

Q Now, Mr. Bates spoke; is that correct?

A Yes.

Q When did he start speaking?

A When everybody got into the room.

Q About what time was that?

A Say about 18 after.

Q About how long did he speak?

A Until about a quarter to 4.

Q During the time that he spoke can you tell me how he appeared?

Did he read from something? Did he speak extemporaneously from notes or what?

A When I was watching him I notice that he actually didn't read off it but he glanced at it every now and then.

Q Glanced at it when?

A A piece of paper that he was holding that was folded.

Q Did he distribute these or any pieces of paper to

employees?

A No, he didn't.

Q Now, I'm going to ask you if you will to tell me all that you can recall that you heard Mr. Bates say?

A Mr. Bates started, he started speaking about how the picketers were cursing at the people, using such and such type of language and saying that they had to pay out $8,000 for new tires and that if anybody had any damage done to their car to go see Roy Legault and he would take care of the people as far as damage to the cars went.

Then Mr. Bates went on to say that there was going to be an election held and he said a vote.

Well, when he was standing there by the window, pointed out to Local 119B that was on strike and said a vote for that union is a vote against your job. A vote for our union is a vote for your job.

Q When he said "Our union" did he mention the name of any union?

A After awhile. He said either 381 or 318, it was one or the other.

Q In other words, he mentioned one number and you don't recall whether it is 318 or 381?

A Right.

Q Do you recall any other name attached to this number?

A Corrugated Board, something like that.

Q What did he say in connection with this union?

A He said that it would be cheaper to join and the benefits would be better.

Q Did you point out, do you recall anything further that he said in the course of this speech?

A He was talking about well, financial statement, he said the waste had been up, he hoped to get production to full working potential by September, and he emphasized the fact that he would like everybody to work eight days a week including overtime because they had a little problem with Avon over there.

Q Do you recall anything further?

A I recall he made a statement referring to 119 and called them horse, livery, something like that.

He said horse, livery and casket, undertakers and then he said Hellman and his mob, vicious mob, rather.

Q Do you recall anything further?

A I don't recall.

Q Do you recall him discussing a vote coming up?

A Yes, he said there would be an election held.

Q Do you recall what, if anything, he said about the election?

A That a vote for this union, pointing to the strikers, was a vote against your job, and a vote for 318, 381, was

a vote for your job.

Q On or about when did you leave the company's employ?

A The 22nd of August. I had gotten into a car accident and I wasn't able to have any transportation, so --

Q Did you leave the employment of the company the day of the speech?

A No, it was the 26th.

Q Several days after the speech in any event?

A Yes.

Q What was the reason for leaving the company?

A I had no transportation to get there.

Q Was that your only reason for leaving the company?

A Well, not really.

It seemedto be as well organized and run as a school shop for about the 8th or 9th grade.

Q I take it you were dissatisfied with the company?

A There was a lot of hassles with --

MR. HUSBAND: I will object to it as to the irrelevance.

MR. EDELMAN: I want to establish, Your Honor, that he was not terminated. It bears on his credibility. I want to show he left voluntarily and I want to bring out all the reasons he left.

JUDGE BRACKEN: Objection overruled.

Q Mr. Cybulski, were you paid to come down here and

complete my direct testimony on by 4:15, yes.

JUDGE BRACKEN: All right, let us put him on.

MR. EDELMAN: All right.

MR. HUSBAND: I think I would like to introduce this one.

JUDGE BRACKEN: That is --

MR. HUSBAND: Respondent's Exhibit 3.

JUDGE BRACKEN: Respondent's Exhibit 3.

Mr. Edelman, any objection?

MR. EDELMAN: I have no objection.

JUDGE BRACKEN: All right, Respondent's Exhibit 3 will be admitted.

(Respondent's Exhibit 3 for identification, received in evidence, of this date.)

JUDGE BRACKEN: Will you call a witness, Mr. Edelman.

MR. EDELMAN: Yes, counsel for the General Counsel will call Christopher Caruso.

Whereupon,

CHRISTOPHER CARUSO

having been called as a witness, and having been first duly sworn by Judge Bracken, took the stand and testified as follows:

DIRECT EXAMINATION

Q (By Edelman) Mr. Caruso, are you presently employed at Arkay?

Q What was your conversation with Mr. Murotore?
A I asked him if I could have a card, if I could have some cards because I wanted to sendthem in.
Q Where did you ask Mr. Muratore this question?
A The cafeteria.
Q And on or about what time of day was it?
A I think it was lunch.
Q What did Mr. Muratore say?
A He said okay.
Q What did he do, if anything?
A He gave me some cards.
Q How many cards didhe give you?
A Three or four.
Q What did you do with them, if anything?
A I signed one and sent it in and I gave a couple out to the guys in my department.
Q Did you look at the card when you signed?
A Yes.
Q Do you know for what union you were signing?
A Yes.
Q What union were you signing for?
A 381.
Q Is that the Folding box, Corrugated Box?
A Yes, Folding Boc, Corrugated.
Q I direct your attention to a period of time two

weeks ago and ask you if you took part in an election for a prepresentative of your department to be a member of an employee committee?

A Yes, we picked some one.

Q How did this vote take place?

A We just got together and picked a person.

Q When you say we just got together, who just got together?

A People in the department.

Q In your department?

A Yes.

Q And you picked a representative?

A Yes.

Q What made you pick a representative?

A Because we wanted to get -- we wanted to get some representation.

Q Whose idea was it to pick a representative?

A All of our -- you know, just got together and that is what we decided to do.

Q Who was the representative picked in your department?

A Danny Falcone.

Q To your knowledge did Mr. Falcone as your representative meet with the employer?

A Yes.

Q And at the meeting did he discuss in any way the meeting with you and the members of your department?

A Yes.

Q Can you tell me what he said to you about the meeting?

A He said that they had talked over a number of situations and nothing was clear yet.

Q Did he say what situations they had talked over?

A When should overtime start and end and things like that.

Q Did he say how many times they had met with the company? Was it more than once?

A I think it was twice as of yesterday, twice.

Q Did there come a time when the employee's organization met to decide what demands should be presented to the company?

A I guess so, yes.

Q Do you know?

A No. Yes, I do know.

Q You do know?

A Yes.

Q Did you meet, the employees as a whole?

A No, I thought you meant the committee.

Q Did the committee meet then?

A Yes.

Q When did they meet?

PCA Rotation

A Sometime during the week. I know they met once during this week, probably before that also.

Q Are you a member of 381

A No.

Q Are you a member of 11B?

A No.

Q Have you ever been a member of 11B?

A No.

Q 11B ever do any damage to your car?

A Just flat tires.

Q As far as you were concerned members of 119 gave your car flat tires?

A Yes, definitely.

Q Did they in any way hinder you from gaining entrance to the plant?

A Just threats.

Q They did make some threats to you?

A Yes. They still do.

Q What have they said to you?

A Do you want me to repeat it?

Q Yes, please.

A Oh, they call you fuckin creep and that, you know, they are going to break your neck if they ever see you outside, stuff like that.

MR. EDELMAN: No further questions.

ORIGINAL

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

National Labor Relations Board

DOCKET NO. 29-CA-3992

IN THE MATTER OF:

ARKAY PACKAGING CORPORATION

PLACE: Brooklyn, New York

DATE: February 6, 1975

PAGES: 150-224

District 1

C. S. A. REPORTING CORPORATION
Official Reporters
300 Seventh Street, S.W. Washington, D. C. 20024
393-2320

P R O C E E D I N G S

JUDGE BRACKEN: On the record.

Will the General Counsel call his next witness?

MR. EDELMAN: The General Counsel will call John Romaner, Your Honor.

Whereupon,

JOHN ROMANER

called as a witness, was duly sworn and testified as follows:

JUDGE BRACKEN: Be seated.

State your name please.

THE WITNESS: John Romaner.

R-O-M-A-N-E-R. John.

DIRECT EXAMINATION

Q (By Mr. Edelman) Mr. Romaner, are you presently employed by Arkay?

A Yes.

JUDGE BRACKEN: Mr. Romaner, you're going to have to keep your voice up.

It seems General Counsel's witnesses so far have been very low voiced, making it very difficult for the Court Reporter, who is four feet away from you, and Counsel.

The General Counsel is now 20 feet from you, and you will have to speak loud enough so he can hear you, which also means everybody in the room can hear you.

Q Were you present when Mr. Bates spoke to the employees?

A Well, he spoke a number of times.

Q Were you present on or around August 22nd?

A Are you referring to the speech?

Q Yes, I'm referring to the speech.

A Yes, I was there for the speech.

Q Okay.

Where did the speech take place?

A In the cafeteria.

Q On or about what time did the speech take place?

A I'd say around 3:45.

Q What time did the speech conclude?

A The speech itself, it lasted about 10 minutes.

Q Do you have an idea as to what -- when do you get off from work?

A Now?

Q No, when did you get off from work there, what time?

A 4:00 o'clock.

Q All right.

In connection with your leaving time, did you have time to return to work, or were you -- did you leave right after the speech, or exactly what took place?

A I recall the election, him mentioning the election, about voting, there would be a ballot, on the ballot would be for Joe Hellman and the Teamsters, and Arkay.

And a vote yes would be for Joe Hellman, and the Teamsters; if you vote -- -- a vote no would be a vote for Arkay.

MR. HUSBAND: Could you speak up, please, Mr. Romaner?

JUDGE BRACKEN: Mr. Romaner --

MR. HUSBAND: Mr. Romaner, I have a low voice, too, but I can get it across the room.

JUDGE BRACKEN: There's traffic outside, Mr. Romaner, and there's buses and trucks, and we have this hearing problem.

You'll have to speak up.

Address the person in the back of the room, and then maybe we can all hear you.

Q Do you recall anything else of the speech?

A Not much. I can't remember.

Q Well, do you recall that there was a question raised at the speech?

A Yes, I do.

Q What was the question?

A An employee asked Mr. Bates, after the speech was given, if there will ever be a Union of our own

in there, and he answered, he says if any Union, most likely 381.

Q Now, it was Mr. Bates that mentioned Local381, is that correct?

A Yes.

Q Do you recall Mr. Bates saying anything else about Local 381 in this speech, or in this --

A No.

Q Do you recall Mr. Bates stating anything about 381 being on an election ballot?

A Yes, I do.

Q Can you tell me what he said about that?

A I don't remember what meeting it was at.

It was not at the meeting where he gave the speech.

Q It was at another meeting?

A Yes.

Q Can you tell me, was this meeting where he mentioned 381 being on the ballot, was that before his speech or after the speech?

A I can't recall.

Q But it was at a meeting?

A Yes.

Q What did he say about 381, at this meeting?

A He mentioned that once 119 was legally out, that

Q Do you recall, directing your attention now to the August 22nd talk that he had with the employees, do you recall that he referred to the Union outside as a stinking --

Strike that.

As a vicious mob?

A Yes, I do.

Q Do you recall that he said as long as they're out there, the worse things are going to get, and the faster we get them out, the better things would be?

A I don't recall that.

Q Okay.

Now, I direct your attention to sometime on or about the beginning of August, and I ask you if you can recall, sometime around that period of time, receiving a Local 381 card?

A I'm not aware of the time, right now I'm not aware of the time, but I remember receiving a card.

Q All right.

Now, I'm going to ask you again to look at your statement and perhaps that will refresh your recollection.

Do you recall when you were attacked by these striking people, when they came into your car?

Was that before the speech on August 22nd?

A I believe so, yes.

A Danny Falcone.

Q How many representatives are on this committee, do you know?

A I have no idea.

Q Do you --

A I know that there should be one from each department.

Q Do you know that Roy Wolmart is a representative of the committee?

A Yes.

Q And Falcone is a representative?

A Yes, I do.

Q Do you have any knowledge of any other representatives?

A No, I don't.

Q Do you have any knowledge how the committee was formed?

A Formed by employees.

Working people.

Q Do you have any knowledge how it came to be that the employees formed this committee?

A I guess the working people got together and wanted to discuss their grievances with the Company.

Q Are you aware of what these grievances were that they wanted to discuss with the Company?

And she opened the door and then she closed it.

I was standing by the door, and I seen Roy Wolmart's face.

JUDGE BRACKEN: She did not go into the meeting?

THE WITNESS: She did not walk in, no.

JUDGE BRACKEN: Any further questions?

MR. EDELMAN: I have nothing further.

MR. HUSBAND: No.

JUDGE BRACKEN: You may step down.

(Whereupon, this witness was excused.)

MR. HUSBAND: I have, of course, reserved my right to cross examine him later about the committee aspects.

JUDGE BRACKEN: Right.

MR. HUSBAND: Okay.

JUDGE BRACKEN: Do you have any more witnesses, Mr. Edelman?

MR. EDELMAN: Yes, one more.

General Counsel calls Lou Ann Provenzano.

Whereupon,

LOU ANN PROVENZANO

called as a witness, was duly sworn and testified as follows:

JUDGE BRACKEN: Be seated.

DIRECT EXAMINATION

Q (By Mr. Edelman) Miss Provenzano, are you

If they wanted to, it was up to them.

Q Did you obtain a card?

A No, I did not.

Q Did you ever ask Muratore for a card?

A No.

Q Now, about two weeks or so ago, was there an election in the glue department for a representative?

A Yes.

Q On the employees' committee?

A Yes.

Q Who was elected?

A Michael LoCascio.

I think that's his last name.

Q How was this election -- how did it take place?

A In my department?

Q Yes?

A We all wrote down who we had chosen.

Q This was a written ballot that you had?

A Yes.

Q And when was the vote taken, during a break, during working hours, after working hours?

A No, during work.

Q Where was Mr. Muratore at the time that the vote was taken?

A I have no idea.

Q Do you know if he voted in the election?

A Well, I went around with a sheet for everyone to sign, if they wanted to, but I don't even remember seeing him there.

Q Do you know how this committee came to be formed?

A Just -- no, not really.

I have no special people in mind.

Q Who told you about the fact that there was going to be a committee, do you recall?

A No. I don't, no.

Q Are you aware that the committee had any meetings with Company representatives?

A Yes.

Q Are you aware how many meetings they had?

A Maybe 2.

I really couldn't say.

Q How did you receive this information?

A Michael approached us.

Q LoCascio?

A Yes.

Q LoCascio is it?

A I think so.

Q What did he tell you?

A He just said that they had a meeting, and nothing was definite.

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*	)	
v.	)	No. 76-4150
ARKAY PACKAGING CORPORATION, *Respondent.*	)	

CERTIFICATE OF SERVICE

I hereby certify that I have served ~~by hand~~ (by mail) 3 copies of the _____ in the above-entitled case, on the following counsel of record, this 27 day of August 1976.

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